

47. In April 2002, the Maryland Commission began yet another proceeding affecting Verizon's UNE rates in Maryland, when the Maryland Commission commenced its evaluation of Verizon's compliance with the conditions of section 271(c) of the Act.¹⁸⁶ After conducting a detailed examination to determine the status of Verizon's compliance, the Maryland Commission concluded that, subject to certain conditions, Verizon was in "technical compliance" with the checklist.¹⁸⁷ Among other things, the Maryland Commission determined that the then effective UNE rates would "not adequately promote full-scale market entry in Maryland."¹⁸⁸ Accordingly, it required Verizon to reduce its loop rate and unbundled switching rate.¹⁸⁹ The Maryland Commission also required Verizon to adopt, for other UNE rates not previously adopted in Case No. 8731, interim "proxy" rates set using an approach similar to that which Verizon employed in its Virginia section 271 application.¹⁹⁰ This condition also required Verizon to commit to make the rates adopted in Case No. 8879 retroactive to the effective date of the reduced rates.¹⁹¹ Verizon accepted the conditions imposed by the Maryland Commission¹⁹² and, on December 17, 2002, the Maryland Commission found Verizon in technical compliance with the section 271 checklist and the public interest standard established by the Maryland Commission."

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See Maryland Commission Comments, Ex. A at 1

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See *id.* at 1-3.

¹⁸⁸

Id. at 9.

¹⁸⁹

Id. Specifically, the Maryland Commission required Verizon to reduce its statewide average loop rate from \$14.50 to \$12.00 and to reduce its end office per-minute switching rate from \$0.003800 to \$0.001676. *Id.* Verizon was directed to make such rates effective within five days of December 16, 2002. *Id.* See also Verizon Roberts/Garzillo/Prosini Decl., para. 29.

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Maryland Commission Comments, Ex. A at 9. See also Verizon Roberts/Garzillo/Prosini Decl., para. 29. In Virginia, because it needed to establish rates for some UNEs that were not set by the Virginia Commission, Verizon established proxy rates based on: (1) a comparable existing rate in Virginia; (2) New York rates (cost adjusted, if possible); or (3) if lower, a rate being charged to a competitive LEC under an interconnection agreement at the time it adopted the proxy rates. See *Verizon Virginia Order*, 17 FCC Rcd at 21921-22, 21949, paras. 71-73, 122. The Maryland Commission required Verizon to file a list of the rates subject to this condition at the same time it accepted this condition. *Id.* In its letter accepting the conditions imposed by the Maryland Commission, Verizon attempted to clarify that this proxy approach applied only to those rates not previously instituted in Phase II of Case No. 8731. See Maryland Commission Comments, Ex. B at 1-2. The Maryland Commission confirmed that Verizon's clarification of this condition was correct. See Maryland Commission Comments, Ex. C at 1.

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See Maryland Commission Comments, Ex. A at 9. See also Verizon Roberts/Garzillo/Prosini Decl., para. 29. In the event that the decision in Case No. 8879 is overturned on appeal, the Maryland Commission required Verizon to commit to reinstituting the reduced rates until such time as the Maryland Commission reconsiders its decision to the extent required by a court. Maryland Commission Comments, Ex. A at 9. The Maryland Commission also required Verizon to amend its Model Interconnection Agreement to eliminate charges for certain pre-order queries to its Directory Listing Inquiry System and to seek state approval before instituting any such charges. *Id.*, Ex. A at 8.

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See *id.*, Ex. B at 1-2

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See *id.*, Ex. C at 1

48. As a result of these state proceedings, Verizon's current Maryland UNE rates fall into two general categories. The first category includes all recurring UNE rates that were set in the *Maryland PSC Recurring Rate Order*, except for the loop and per-minute switching rate that were specifically reduced in the context of the state section 271 proceeding.¹⁹⁴ The second category includes rates for which the Maryland Commission required Verizon to adopt interim rates.¹⁹⁵ This category includes all non-recurring rates, rates required by the *UNE Remand Order*, and interim line sharing rates. For these rates, Verizon adopted a rate equaling the lower of (1) the interim rate adopted by the Maryland Commission, or (2) the comparable New York rate, adjusted where possible to reflect relative costs in New York and Maryland based on the Commission's USF Cost Model.¹⁹⁶ On December 18, 2002, Verizon sent an industry letter to competitive LECs informing them that Verizon had revised its UNE rates and attached a list of rates currently available in Maryland.”

49. *Washington, D.C.* The D.C. Commission first adopted interim rates for some UNEs on November 8, 1996 in a consolidated arbitration proceeding under section 252 of the Act.¹⁹⁸ The interim rates were based on proposals submitted by the parties and on the proxy rates set by this Commission in the *Local Competition First Report and Order*.¹⁹⁹ The D.C. Commission adopted interim rates for, among other things, unbundled loops, switching (including trunk ports), and transport.²⁰⁰ The D.C. Commission also adopted some interim non-recurring charges.” In its decision, the D.C. Commission determined that a true-up to

¹⁹⁴ See Verizon Roberts/Garzillo/Prosini Decl., paras. 31-32.

¹⁹⁵ See *id.*, para. 33.

¹⁹⁶ See *id.*, paras. 33-36. Verizon did not adjust the New York port rates because the Synthesis Model predicts that port costs in Maryland are about equal to port costs in New York, and because changes to other non-loop elements produced aggregate non-loop rates that benchmark to New York. *Id.*, para. 34. In some cases, Verizon made further adjustments to take into account rate structure differences. See *id.*, para. 35. Verizon indicates that this is essentially the same approach approved in the Virginia section 271 application. *Id.*, para. 36.

¹⁹⁷ See Verizon Application App. Q – Maryland, Vol. 4, Tab 32, Letter from Verizon Maryland to UNE CLEC Customers Re UNE Rates for Existing Interconnection Agreements (dated Dec. 18, 2002). See also Verizon Roberts/Garzillo/Prosini Decl., para. 28, 38.

¹⁹⁸ See Verizon Application, App. H – District of Columbia, Vol. 1, Tab 2, Telecommunications Arbitration Case No. 6 – *In the Matter of Consolidated Issues Raised in Petitions for Arbitration Pending Before the Public Service Commission*, Arbitration Decision, Order No. 5 at 1-2 (rel. Nov. 8, 1996) (considering issues relating to rates for UNEs and reciprocal compensation arrangements) (*DC. PSC Interim Rate Order*).

¹⁹⁹ See generally *D.C. PSC Interim Rate Order*; see also Verizon Johns/Garzillo/Prosini Decl., para. 13.

²⁰⁰ See generally *D.C. PSC Interim Rate Order*; Verizon Johns/Garzillo/Prosini Decl., para. 13. Moreover, the D.C. Commission established an interim resale discount rate of 24.7 percent in a separate decision on December 2, 1996. See Verizon Application, App. H – District of Columbia, Vol. 1, Tab 3, Telecommunications Arbitration Case No. 6 – *In the Matter of Consolidated Issues Raised in Petitions for Arbitration Pending Before the Public Service Commission*, Arbitration Decision, Order No. 6 at 16 (rel. Dec. 2, 1996); see also Verizon Johns/Garzillo/Prosini Decl., para. 13.

²⁰¹ See *D.C. PSC Interim Rate Order* at 29-36.

permanent UNE rates “is unlikely to be necessary,” but also stated that it would not preclude a party from requesting a true-up to permanent UNE rates once such rates were **established**.²⁰²

50. On January 17, 1997, Verizon filed a proposed **SGAT** and the D.C. Commission determined that it would consider Verizon’s **SGAT** in concert with hearings already scheduled in a pre-existing proceeding, Formal Case No. **962**.²⁰³ Formal Case No. 962 was opened on October 9, 1996 to address and resolve various issues associated with the transition to a competitive local exchange **market**.²⁰⁴ In May 1997, parties filed proposed cost studies and, in June 1997, the D.C. Commission held four days of hearings during which it requested sensitivity runs of the parties’ cost **models**.²⁰⁵ In October 1997, the D.C. Commission directed parties to file sensitivity runs using specified inputs and adjustments to the Verizon cost models, and parties filed their results in October and November 1997.²⁰⁶

51. During the period of review of Verizon’s **SGAT** and proposed UNE rates, Verizon states that it provisioned UNEs in Washington, D.C. pursuant to interconnection agreements that contained a combination of interim rates set by the D.C. Commission and rates contained in Verizon’s proposed **SGAT**.²⁰⁷ On September 28, 1999, the D.C. Commission directed parties to file comments on the status of the issues, the future course of proceedings in Formal Case No. 962, and the impact of recent regulatory developments.” On December 21,

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See D.C. PSC Interim Rate Order at 49.

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See Verizon Application, App. C – District of Columbia, Vol. 2, Tab 4, Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996, Order, Order No. **10916** (rel. Jan. 29, 1997). In this decision, the D.C. Commission announced that it would adopt permanent rates and conditions in Formal Case No. **962** to replace any interim rates and conditions adopted in the previous arbitration proceeding. *Id.* at 5. *See also* Verizon Johns/Garzillo/Prosini Decl., para. **14**.

²⁰⁴

See Verizon Application, App. C – District of Columbia, Vol. 2 Tab 8, Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996, Order, Order No. **11496** at 1 (rel. Sept. 28, 1999) (*D.C. PSC Sept. 28 Rate Order*).

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Verizon Johns/Garzillo/Prosini Decl., para. **14**. In May 1997, AT&T and MCI jointly filed the Hatfield cost model and OPC-DC filed a proposed cost model. *Id.*

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See Verizon Application, App. C – District of Columbia, Vol. 2, Tab 5, Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996, Order Regarding Additional Sensitivity Runs, Order No. **11081** at 1 (rel. Oct. 27, 1997); Verizon Application, App. C – District of Columbia, Vol. 12, Tab 83, Formal Case No. **962**, *In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Opinion and Order, Order No. **12610** at 4 (rel. Dec. 6, 2002) (*D.C. PSC Final Rate Order*). The D.C. Commission also held a hearing on December 3, 1997 to receive additional information on discrepancies in the sensitivity runs. *D.C. PSC Final Rate Order* at 4.

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Verizon Johns/Garzillo/Prosini Decl., para. **16**. Verizon’s 1997 **SGAT** expired on December 1, 1999. *Id.*

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Id., para. 17. *See generally D.C. PSC Sept. 28 Rate Order. See also D.C. PSC Final Rate Order* at 4-5 (summarizing the *D.C. Sept. 28 Rate Order*).

2000, the D.C. Commission adopted a revised list of issues to be considered in Formal Case No. 962 and directed Verizon to file revised cost studies,²⁰⁹ which Verizon filed on January 29, 2001.²¹⁰ In April 2001, the D.C. Commission granted a request by Verizon to suspend the procedural schedule and allowed Verizon to file another set of revised cost studies,²¹¹ which Verizon filed along with supporting testimony, on July 16, 2001.²¹² Between March 2002 and July 2002, the D.C. Commission directed parties to perform numerous sensitivity runs, held three days of hearings, and received post-hearing briefs?" On November 18, 2002, the D.C. Commission directed Verizon and AT&T to re-run their cost models with revised, Commission-specified inputs?" Verizon and AT&T filed revised sensitivity runs on November 26, 2002.²¹⁵

52. On December 6, 2002, the D.C. Commission released an order, which was effective immediately, establishing permanent UNE rates in Formal Case No. 962.²¹⁶ In its section 271 application, Verizon stated its intent to file a petition for reconsideration of the D.C. Final Rate Order, which would, under Washington, D.C. law, stay the applicability of the order

²⁰⁹ See Verizon Application, App. C – District of Columbia, Vol. 3, Tab 17, Formal Case No. 962, *In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Opinion and Order, Order No. 11861 at 1 (rel. Dec. 21, 2000); Verizon Johns/Garzillo/Prosini Decl., para. 19.

²¹⁰ Verizon Johns/Garzillo/Prosini Decl., para. 19. Specifically, Verizon filed cost studies for recurring and non-recurring permanent UNE rates and wholesale discount rates. A technical workshop to review the revised cost studies was held on March 15, 2001. *Id.* See also *D.C. PSC Final Rate Order* at 6.

²¹¹ *D.C. PSC Final Rate Order* at 6; Verizon Johns/Garzillo/Prosini Decl., para. 20. Verizon made the request due to the fact that it had recently updated its data and performed new cost studies in other Verizon jurisdictions. Verizon Johns/Garzillo/Prosini Decl., para. 20.

²¹² Verizon Johns/Garzillo/Prosini Decl., para. 21; see also *D.C. PSC Final Rate Order* at 6.

²¹³ *D.C. PSC Final Rate Order* at 8-9; Verizon Johns/Garzillo/Prosini Decl., para. 22-23,

²¹⁴ See Verizon Application, App. C – District of Columbia, Vol. 12, Tab 78, Formal Case No. 962, *In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order, Order No. 12601 (rel. Nov. 18, 2002) (*D.C. PSC Nov. 18 Rate Order*); Verizon Johns/Garzillo/Prosini Decl., para. 24. Specifically, the D.C. Commission found that the data from the sensitivity runs contained inputs and assumptions that were not TELRIC-compliant, and ordered the parties to re-run the model using the inputs and assumptions identified by the D.C. Commission. *D.C. PSC Nov. 18 Rate Order* at 3 & App. A.

²¹⁵ *D.C. PSC Final Rate Order* at 9; Verizon Johns/Garzillo/Prosini Decl., para. 24. In its November 26, 2002 filing, Verizon also included UNE rates based on Verizon's New York UNE rates, cost adjusted for the District of Columbia where possible using results from the Commission's Synthesis Model. Verizon proposed that the D.C. Commission use these rates rather than those resulting from the final sensitivity run. Verizon Johns/Garzillo/Prosini Decl., para. 24.

²¹⁶ *Id.*, para. 25; *D.C. PSC Final Rate Order* at 186.

and resulting UNE rates until the D.C. Commission acted on the petition?” **As a** result, in the event of a stay, Verizon stated that it would offer UNEs in Washington, D.C. at the lower of (1) the recurring or non-recurring rate in effect prior to the release of the *D.C. Final Rate Order*, or (2) the equivalent rate in New York, adjusted where possible to reflect relative costs in New York and Washington, D.C. based on the Commission’s USF Cost Model.²¹⁸

53. On December 18, 2002, the day before it filed its section 271 application, Verizon sent an industry letter to carriers operating in Washington, D.C., informing them of the rates at which it would offer UNEs in the event of a stay.” Verizon informed the D.C. Commission on December 26, 2002 of its intent to seek reconsideration of the *D.C. Final Rate Order* and to implement interim UNE rates set at the lower of the rates in effect prior to the *D.C. Final Rate Order* or at rates benchmarked to the TELRIC-compliant rates in New York.²²⁰ On January 3, 2002, Verizon filed an application for partial reconsideration and clarification of the *D.C. Final Rate Order*, claiming that the decision set UNE rates well below cost and requesting that the D.C. Commission vacate its decision setting the rates.” On January 6, 2003, the D.C. Commission issued, on its own motion, an order stating that Verizon was prohibited from “using New York unbundled network element rates, or any other unbundled network element rates, unless this Commission has approved them.”²²² Verizon responded on January 7, 2003,

²¹⁷ Verizon Application at 48, 55-56; Verizon Johns/Garzillo/Prosinì Decl., para. 27. Verizon contends that the D.C. Commission misconstrued the Commission’s pricing methodology and, **as a** result, adopted UNE rates “below the permissible TELRIC range.” Verizon Application at 55-56.

²¹⁸ Verizon Johns/Garzillo/Prosinì Decl., para. 27. Verizon stated that it would offer non-loop elements, including switching usage, port, transport, and signaling, at the lower of (1) the aggregate non-loop rate resulting from the Washington, D.C. rates in effect prior to the *D.C. Final Rate Order*, or (2) the New York equivalent aggregate non-loop rate, adjusted to reflect cost differences between Washington, D.C. and New York based on the Commission’s Synthesis Model. *Id.*

²¹⁹ See Verizon Application, App. J – District of Columbia, Vol. 1, Tab 11, Formal Case No. 962, Letter from Verizon Washington, D.C. to CLECs in the District of Columbia Re: Revised UNE Rates for Existing Interconnection Agreements (dated Dec. 18, 2002).

²²⁰ See Letter from Ann D. Berkowitz, Project Manager–Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at Attach. 1 (filed Jan. 8, 2003) (attaching a copy of Formal Case No. 962, In *the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*; Formal Case No. 1011, In *the Matter of Verizon WashingtonDC, Inc.’s Compliance with the Conditions Established in Section 271 of the Federal Telecommunications Act of 1996*, Order, Order No. 12626 at 2 (dated Jan. 6, 2003)) (Verizon Jan. 8 Ex *Parte* Letter on pricing issues).

²²¹ See Letter from Ann D. Berkowitz, Project Manager–Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 (filed Jan. 7, 2003) (attaching Verizon’s Application for Partial Reconsideration and Clarification of Order No. 12610 at 1-8 (filed Jan. 3, 2003) (Verizon Jan. 7 Ex *Parle* Letter on pricing issues).

²²² See Verizon Jan. 8 Ex *Parte* Letter on pricing issues, Attach. 1 at 3. The D.C. Commission stated that Verizon had the following choices at this juncture: (1) implement the rates approved in the *D.C. PSC Final Rare Order*; (2) petition the D.C. Commission for new rates; or (3) request that the new UNE rates not be stayed. *Id.*

indicating that it did not intend to charge any UNE rates without the Commission's approval and noted that any change in rates proposed by Verizon would need to be accepted by a competitive LEC and incorporated into an interconnection agreement subject to the approval of the D.C. Commission.²²³

54. On January 9, 2003, Verizon filed with the D.C. Commission an amendment to an interconnection agreement between Verizon and Paetec Communications, Inc. containing UNE rates that would pass a benchmark analysis to Verizon's New York UNE rates?" The D.C. Commission approved the amendment to the interconnection agreement on January 24, 2003, but noted that its approval of the negotiated UNE rates was not a determination of whether the rates are TELRIC-compliant, cost-based, or just and reasonable.²²⁵

55. **West Virginia.** The West Virginia Commission initially established rates for some UNEs in 1997 in a rate proceeding triggered by Verizon's filing of a proposed SGAT.²²⁶ In this rate proceeding, referred to in the record as the SGAT Proceeding, the West Virginia Commission reviewed cost models and proposals submitted by Verizon, AT&T and other parties and issued an order establishing UNE rates on April 21, 1997. In calculating many of the recurring rates, the West Virginia Commission adopted AT&T's proposed cost model, the Hatfield model version 2.2.2, but made adjustments to several of AT&T's proposed inputs, including certain depreciation lives, the distribution fill factor and structure sharing percentages." For non-recurring rates, the West Virginia Commission adopted Verizon's non-recurring cost model but concluded that Verizon should not be permitted to charge for "coordinated cut-overs" performed using routine procedures at routine times.²²⁸ Verizon, AT&T, WorldCom and Sprint filed petitions for reconsideration of the West Virginia Commission's

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Id. Attach. 2 at 1 (attaching Verizon Washington, D.C. Inc.'s Response in Compliance with Order No. 12626, Formal Case No. 962 and Formal Case No. 1011 (filed Jan. 7, 2003)).

²²⁴

See Letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Jan. 24, 2003) (attaching a copy of Formal Case No. TIA 99-10, *In the Matter of the Application of Verizon Washington, D.C., Inc. for Approval of an Amendment to an Interconnection Agreement with Paetec Communications, Inc. Under Section 252(e) of the Telecommunications Act of 1996*, Order No. 12641 at 1-2 (dated Jan. 24, 2003)) (D.C. PSC *Verizon/Paetec Approval Order*)).

²²⁵

See D.C. PSC *Verizon/Paetec Approval Order* at 4.

²²⁶

See Verizon Application, App. C – West Virginia, Vol. 3, Tab 34, *Bell-Atlantic-West Virginia, Inc. Petition to Establish a Proceeding to Review the Statement of Generally Available Terms and Conditions Offered by Bell-Atlantic in Accordance with Sections 251, 252 and 271 of the Telecommunications Act of 1996*, Case No. 96-1516-T-PC, Commission Order on Arbitration (rel. Apr. 21, 1997) (*West Virginia Commission April 21 Order*). The rate proceeding was consolidated with an interconnection arbitration between Verizon and AT&T as well as two other related proceedings. See Verizon Given/Garzillo/Sanford Decl., para. 14.

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See *West Virginia Commission April 21 Order* at 38-50; Verizon Given/Garzillo/Sanford Decl., para. 19.

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See *West Virginia Commission April 21 Order* at 68-69; Verizon Given/Garzillo/Sanford Decl., para. 20.

April 21, 1997 order.” On reconsideration, the West Virginia Commission adopted a higher distribution fill factor and cost of capital but otherwise affirmed its April 21 Order.²³⁰

56. Following the conclusion of the SCAT proceeding, Verizon continued to work with the staff of the West Virginia Commission to calculate additional recurring rates not calculated by the Hatfield Model. Where possible, these new rates were derived using a rate produced by the Hatfield Model in the SGAT proceeding.²³¹ Where the Hatfield Model did not produce a rate from which the new UNE rate could be extrapolated, Verizon used its proprietary cost model, together with inputs prescribed by the West Virginia Commission in the SGAT proceeding to derive the new rate.²³² On January 6, 1999 and February 9, 1999, Verizon filed revised SGATs incorporating new rates and rate revisions that resulted from its discussions with the West Virginia Commission staff.²³³ Verizon reports that no party raised any objection to either the rates or the methodologies used to develop new and revised UNE rates.²³⁴ The West Virginia Commission approved Verizon’s revised SGAT implementing these new and revised rates on April 16, 1999.²³⁵ Verizon states that although it allowed its SGAT to expire in late

²²⁹ See Veriwn Given/Garzillo/Sanford Decl., para. 21.

²³⁰ See Verizon Application, App. C – West Virginia, Vol. 3, Tab 37, *Bell Atlantic-West Virginia, Inc. Petition to Establish a Proceeding to Review the Statement of Generally Available Terms and Conditions Offered by Bell Atlantic in Accordance with Sections 251, 252 and 271 of the Telecommunications Act of 1996*, Case No. 96-1516-T-PC, Order at 56-57, 61-63 (rel. May 16, 1997) (*West Virginia Commission May 16 Order*). The West Virginia Commission otherwise affirmed its April 21 Order and clarified that Verizon could impose a charge for vertical features because the Hatfield Model’s switching rates did not “provide[] for the full cost of recovery of all equipment and software used to provide vertical features.” *West Virginia Commission May 16 Order* at 59; Verizon Given/Garzillo/Sanford Decl., para. 21.

²³¹ For example, in establishing a recurring rate for 4-wire analog loops, which the Hatfield Model did not produce, Verizon used its own cost model to determine the cost difference, in percentage terms, between 2-wire and 4-wire loops, and then applied that ratio to the 2-wire loop rate the Hatfield Model did produce. See Verizon Given/Garzillo/Sanford Decl., para. 23. Similarly, to derive a rate for tandem switching, Verizon added the Hatfield Model’s tandem switching rate (which does not include the cost of terminating the call at the end office) to the rate developed using Verizon’s own cost model for terminating calls at a Verizon end office. See *id.*

²³² For example, to determine rates for DS1 and DS3 dedicated transport, Verizon used its cost model with the cost of capital, depreciation and other inputs mandated by the West Virginia Commission. See Verizon Given/Garzillo/Sanford Decl., para. 23 (citing Letter from David B. Frost, Vice President and General Counsel, Bell Atlantic-West Virginia, Inc. to Mark A. Keffer, Senior Attorney, AT&T Communications of West Virginia, Inc. dated Oct. 17, 1997, Verizon Application App. C – West Virginia, Vol. 4, Tab 42).

²³³ In addition to establishing rates for new UNEs, Verizon states that it revised rates to correct for transcription and calculation errors made in deriving the original rates. Verizon also reduced its tandem switching rates and its local switching usage originating rate as recommended by the West Virginia Commission staff. See Verizon Given/Garzillo/Sanford Decl., para. 25.

²³⁴ See *id.*, para. 23.

²³⁵ See Verizon Application, App. C – West Virginia, Vol. 4, Tab 50, *Bell Atlantic-West Virginia, Inc. Petition to Establish a Proceeding to Review the Statement of Generally Available Terms and Conditions Offered by Bell-* (continued.. ..)

1999, the SGAT rates remain in effect through Verizon's interconnection agreements with other carriers.²³⁶

57. On December 21, 2001, Verizon filed a Petition for Declaratory Ruling with the West Virginia Commission seeking approval of proposed rates for several additional recurring and non-recurring UNEs that were not addressed in the SGAT proceeding or the West Virginia Commission's April 16, 1999 Order. These additional rates, which are referred to in the record as the "Gap/Remand/Merger UNEs," fall into one of three categories: (1) rates required by the this Commission's orders following the U.S. Supreme Court's remand of the Local *Competition* Order; (2) rates required in connection with the Bell Atlantic/GTE merger; or (3) rates "intended to provide to competitive local exchange carriers (CLECs) an appropriate suite of wholesale telecommunications services over Verizon WV's network."²³⁷ The West Virginia Commission opened a proceeding, referred to in the record as the "Gap/Remand/Merger Proceeding," to consider Verizon's proposals. The West Virginia Commission received evidence and testimony in this proceeding in June through August 2002.²³⁸

58. On October 24, 2002, Verizon, the West Virginia Commission staff and the Consumer Advocate Division filed a Joint Stipulation proposing reduced rates for all recurring and non-recurring charges proposed in the Gap/Remand/Merger proceeding.²³⁹ Specifically, for recurring rates, the GAP/Remand/Merger Joint Stipulation recommended adopting the lower of: (1) Verizon's proposed rate reduced by 2.2 percent, or (2) the comparable New York rate adjusted for cost differences between New York and West Virginia through the use of the Synthesis Cost Model.²⁴⁰ For non-recurring rates, the GAP/Remand/Merger Joint Stipulation recommended adopting Verizon's proposed rates reduced by 2.2 percent.²⁴¹ For non-recurring

(Continued from previous page)

Atlantic in Accordance with Sections 251, 252 and 271 of the Telecommunications Act of 1996, Case No. 96-1516-T-PC, Order (rel. April 16, 1999) (*West Virginia Commission April 16 Order*).

²³⁶ See Verizon Given/Garzillo/Sanford Decl., para. 26.

²³⁷ Verizon Application, App. D – West Virginia, Vol. 1, Tab 1, *Verizon West Virginia Inc. Petition for Declaratory Ruling that Certain Pricing of Certain Additional Unbundled Network Elements (UNEs) Complies with Total Element Long-Run Incremental Cost TELRIC Principles*, Case No. 01-1696-T-PC, Petition at 2-3 (filed Dec. 21, 2001); West Virginia Commission Comments at 3.

²³⁸ See West Virginia Commission Comments at 54; Verizon Given/Garzillo/Sanford Decl., paras. 30-32.

²³⁹ See Verizon Given/Garzillo/Sanford Decl. Attach. I (attaching Petition of Verizon West Virginia, Inc., the Staff of the Public Service Commission of West Virginia, and the Consumer Advocate Division of the Public Service Commission of West Virginia for the Adoption of the Parties' Joint Stipulation in *Verizon West Virginia Inc. Petition for a Declaratory Ruling that Certain Pricing of Certain Additional Unbundled Network Elements Complies with Total Element Long-Run Incremental Cost ("TELRIC") Principles*, Case No. 01-1696-T-PC, Joint Stipulation (filed Oct. 24, 2002)) (Gap/Remand/Merger Joint Stipulation); West Virginia Commission Comments at 54.

²⁴⁰ See Gap/Remand/Merger Joint Stipulation at 3. See also Verizon Given/Garzillo/Sanford Decl., paras. 35-37.

²⁴¹ See Gap/Remand/Merger Joint Stipulation at 3. See also Verizon Given/Garzillo/Sanford Decl., paras. 38-39.

UNE-platform rates, the Gap/Remand/Merger Joint Stipulation recommended adopting reduced rates proposed by the West Virginia Commission staff and the Consumer Advocate Division.²⁴² The Gap/Remand/Merger Joint Stipulation also recommended changes in certain recurring rates and density cell structures, consistent with a reduction in loop rates recommended in the separate Joint Stipulation filed in the state section 271 application proceeding, which we discuss below.” Additionally, the Gap/Remand/Merger Joint Stipulation recommended reducing Verizon’s non-recurring service order charges to establish uniformity between two-wire and four-wire service order charges.²⁴⁴ The West Virginia Commission adopted the Gap/Remand/Merger Joint Stipulation on December 18, 2002.²⁴⁵

59. Parallel to the West Virginia Commission’s consideration of the Gap/Remand/Merger pricing proposals, the West Virginia Commission considered Verizon’s state section 271 application. On October 15, 2002, in conjunction with Verizon’s state section 271 application, Verizon, the West Virginia Commission staff and the Consumer Advocate Division entered into another Joint Stipulation pursuant to which Verizon agreed to: (1) reduce per minute originating switching rates by over 70 percent; (2) reduce per minute terminating switching rates by over 55 percent; (3) reduce certain UNE rates in density cell 3 and move certain wire centers from higher to lower density cell levels, thereby reducing statewide average loop rates by approximately 17 percent; and (4) freeze these rates until the expiration of Verizon WV’s Incentive Regulation Plan, scheduled for January 1, 2006.²⁴⁶ In its comments filed in this proceeding, the West Virginia Commission adopts the rate proposals set forth in the October 15 Joint Stipulation.²⁴⁷ In doing so, the West Virginia Commission notes that the resulting UNE-platform, loop and switching rates are well below the threshold required to pass a benchmark comparison to New York using the Commission’s Synthesis Cost Model.²⁴⁸ In its comments, the West Virginia Commission finds that the price reductions proposed in the October 15 Joint Stipulation are “reasonable and in the public interest.”²⁴⁹ On this basis, the West Virginia Commission concluded that Verizon satisfies the requirements of checklist item 2.²⁵⁰ In an *ex parte* letter filed on January 24, 2003, day 36 of our 90-day statutory review period, Verizon notified the Commission and interested parties that it had discovered two clerical errors in the

²⁴² See Gap/Remand/Merger Joint Stipulation at 3. See also Verizon Given/Garzillo/Sanford Decl., para. 39.

²⁴³ See Gap/Remand/Merger Joint Stipulation at 4.

²⁴⁴ See *id.* at 4.

²⁴⁵ See West Virginia Commission Comments at 54.

²⁴⁶ See *id.* at 54.

²⁴⁷ See *id.* at 60-63.

²⁴⁸ See *id.* at 61.

²⁴⁹ West Virginia Commission Comments at 62.

²⁵⁰ See *id.* at 63.

West Virginia rate list submitted with its application in this proceeding?” Verizon corrected these errors, and the corrections have been approved by the West Virginia Commission.²⁵²

b. Discussion

(i) Complete-As-Filed Requirement

60. We waive the complete-as-filed requirement on our own motion pursuant to section 1.3 of the Commission’s rules to the limited extent necessary to consider rate reductions taken by Verizon during the course of this **proceeding**.²⁵³ The Commission maintains certain procedural requirements governing section 271 applications.” In particular, the “complete-as-filed” requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 **compliance**.²⁵⁵ We maintain this requirement to afford interested parties a fair opportunity to comment on the BOC’s application, to ensure that the Attorney General and the state commission can fulfill their statutory consultative roles, and to afford the Commission adequate time to evaluate the **record**.²⁵⁶ The Commission can waive its procedural rules, however, “if special circumstances warrant a deviation from the general rule and such deviation will serve the public **interest**.”²⁵⁷

61. As we discussed above, Verizon filed its section 271 application with us on December 18, 2002, just after the D.C. Commission released an order establishing new UNE

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Specifically, Verizon incorrectly listed the Mechanized Loop Qualification rate as nonrecurring when it is in fact a recurring charge. Additionally, Verizon incorrectly listed the labor rate for Collocation Remote Terminal Equipment Enclosures as \$21.95 instead of \$24.50. *See* Letter from Ann D. Berkowitz, Project Manager—Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Jan. 24, 2003) (Verizon Jan. 24 **Ex Parte** Letter on corrected **rates** and charges).

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Specifically, the West Virginia Commission recently approved the revised collocation rate and the West Virginia Commission staff has agreed that the Mechanized Loop Qualification rate should be charged on a recurring basis. *See id.*

²⁵³ 47 C.F.R. § 1.3

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See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act, Public Notice, 16 FCC Red 6923 (CCB 2001).

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See Application by Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Rhode Island, CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Red 3300, 3305-06, para. 7 (2002) (*Verizon Rhode Island Order*); *SWBT Kansas/Oklahoma Order*, 16 FCC Red at 6247, para. 21.

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See Verizon Rhode Island Order, 17 FCC Red at 3306, para. 7; *Ameritech Michigan Order*, 12 FCC Red at 20572-73, paras. 52-54.

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Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969). *See also* 47 U.S.C. § 154(j); 47 C.F.R. § 1.3.

rates.²⁵⁸ Verizon anticipated filing a petition for reconsideration of that order, which, under the D.C. Code, would automatically stay the effectiveness of the D.C. Commission's new UNE rates pending issuance of a decision on reconsideration.²⁵⁹ Thus, in its application, Verizon explained that it intended to seek reconsideration of the D.C. Commission's order.²⁶⁰ Verizon further stated that, in the event of a stay, it would offer reduced rates that would pass a benchmark comparison to New York rates. Verizon included these New York benchmark rates in its application as well as the rates that the D.C. Commission established on December 6, 2002.²⁶¹ On January 3, 2003, Verizon petitioned for reconsideration, and this triggered a stay of the effectiveness of the D.C. Commission ordered rates, as Verizon had anticipated.²⁶² Verizon subsequently obtained approval of the New York benchmark rates through an amendment to an interconnection agreement that it negotiated with Paetec Communications, Inc., and these rates are now effective and generally available to requesting carriers in Washington, D.C.²⁶³

62. Several parties object to Verizon's offer of the New York benchmark rates during the pendency of the stay and insist that Verizon should not have filed its section 271 application "until adequate rates were in effect and its application was **complete**."²⁶⁴ In general, commenters criticize Verizon's approach to implementing these rates in Washington, D.C.²⁶⁵ No party claims that Verizon's reduced rates do not pass a benchmark comparison to New York.

²⁵⁸ See Verizon Application at 55. See also *D.C. PSC Final Rate Order*. For additional background on the proceedings before the D.C. Commission, see *supra* paras. 49-54.

²⁵⁹ See Verizon Application at 56.

²⁶⁰ See *id.*

²⁶¹ See *id.* at 56-57.

²⁶² See Verizon Jan. 7 *Ex Parte* Letter on pricing issues

²⁶³ See *D.C. PSC Verizon/Paetec Approval Order* at 4. See also Verizon Application at 56-57.

²⁶⁴ WorldCom Comments at 2. See also OPC-DC Comments at 24

²⁶⁵ For example, AT&T argues that Verizon's unilateral actions to implement the New York benchmark rates in Washington, D.C. "cannot nullify the express determination of the [DC] PSC that just and reasonable UNE price levels are far lower." AT&T Reply Comments at 34. AT&T argues that Verizon's success in convincing a small handful of carriers to accept the New York benchmark rates does not render these rates legal or effective in Washington, D.C. See *id.* at 33-34. See also WorldCom Comments at 2 ("Verizon should not have filed [its application] until adequate rates were in effect and its application was complete"); StarpowerRIS LEC Comments at 37 (Verizon's "wholly unjustified attempt to ignore the rates set by the DC PSC and implement rates that it alone has selected" demonstrates that Verizon's application "is not in the public interest."); OPC-DC Comments at 24 (urging the Commission to reject Verizon's application "until the D.C. Commission establishes permanent unbundled network elements and resale discount rates that are compliant with TELRIC").

63. In response, Verizon argues that because it included the New York benchmark rates in its application, the complete-as-filed rule is not **implicated**.²⁶⁶ Verizon argues that, to the extent the rule is implicated, special circumstances warrant a waiver in this **case**.²⁶⁷

64. We conclude that special circumstances exist that warrant a waiver of the complete-as-filed rule to the limited extent necessary in this case. A major concern that we have identified in prior cases where rates have changed during a proceeding is that interested parties should have a sufficient opportunity to review the new rates, and that the analytical burden of doing so should not be too great in light of the time constraints inherent in the section 271 application **process**.²⁶⁸ In this case, the benchmark rates on which Verizon relies were included in its application, though they were not yet effective. Although there was some uncertainty, initially, about the rates on which Verizon intended to rely, Verizon's January 3, 2003 petition for reconsideration clarified this, triggering the automatic stay and thus Verizon's offer of the New York benchmark rates. On January 24, 2003, the D.C. Commission approved the New York benchmark rates in an amendment to Verizon's interconnection agreement with Paetec Communications, Inc. We believe under these circumstances the Commission and all parties have had ample notice of the applicable rates and Verizon's rate offer and the circumstances in which they would apply.²⁶⁹ Indeed, parties have commented on these **rates**.²⁷⁰ Whatever additional burden parties may have borne in responding to more than one set of rates is mitigated by Verizon's offer of reduced rates that pass a benchmark comparison to New York rates. Rates derived through a Synthesis Cost Model benchmark comparison have become a common feature of section 271 application proceedings and are readily assessed by commenting parties. Indeed, Verizon's rates were so assessed here. Accordingly, we believe that any increased analytical burden in this case was minimal.

65. We also note that Verizon's reduced benchmark rates are lower than the rates that are otherwise in effect in Washington, D.C. as a result of the stay of the D.C. Commission's December 6, 2002 order. During the pendency of the stay, the old D.C. rates, which are based on the proxy rates set by this Commission in its 1996 Local **Competition** Order, are in effect in D.C.²⁷¹ Verizon concedes that the old rates have never been subject to a TELRIC **analysis**.²⁷²

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See Letter from Ann D. Berkowitz, Project Manager–Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 3-5 (filed Jan. 28, 2003) (Verizon Jan. 28 *Ex Parte* Letter on pricing issues).

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See *id.* at 5-7.

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Verizon Rhode Island Order, 17 FCC Rcd at 3308, paras. 10-11

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Verizon Jan. 28 *Ex Parte* Letter on pricing issues at 5.

²⁷⁰

See e.g., AT&T Comments at 42 (reporting that the New York benchmark loop rate proposed by Verizon is nearly double the loop rate approved by the D.C. Commission, the port rate is more than double, the end-office switching rates are eight to nine times higher, and the tandem switching rate is more than 23 times higher than the D.C. Commission ordered rate).

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D.C. Commission Comments at 3. The D.C. Commission notes that the Commission's proxy rates were invalidated by the Eighth Circuit. See *id.* (citing *Iowa Utilities Board v. FCC*, 219 F.3d 744, 756 (8th Cir. 2000)).

Accordingly, we conclude that grant of this waiver in this instance will serve the public interest.²⁷³

(ii) **TELRIC Compliance**

(a) **West Virginia TELRIC Issues**

66. FiberNet argues that the West Virginia UNE rates established in the West Virginia Commission's 1997 rate proceeding are over five years old, based on stale evidence, outdated inputs and assumptions and, therefore, no longer TELRIC-compliant.²⁷⁴ FiberNet also argues that the recent rate reductions set forth in the October 15 Joint Stipulation are "illusory" and are not the product of a TELRIC-compliant cost presentation.²⁷⁵ FiberNet argues that Verizon's UNE prices are among the highest in the nation, the highest in the Verizon footprint and are too high to support meaningful competitive entry in West Virginia.²⁷⁶

67. AT&T asserts that Verizon's switching rates reflect a double recovery of vertical features costs.²⁷⁷ AT&T also asserts that the switch discount used to develop the vertical features

(Continued from previous page) _____

²⁷² See Verizon Jan. 8 *Ex Parte* Letter on pricing issues (attaching Verizon Washington, D.C., Inc.'s Response in Compliance with Order No. 12626, Formal Case No. 962 and Formal Case No. 1011, Response at 11 (filed Jan. 7, 2003)).

²⁷³ In an *ex parte* letter filed on January 24, 2003, day 36 of our 90-day statutory review period, Verizon notified the Commission and interested parties that it had discovered two clerical errors in the West Virginia rate list submitted with its Application in this proceeding. See Verizon Jan. 24 *Ex Parte* Letter on pricing issues at 1. See also, *supra*, para. 59. As noted above, Verizon has corrected these errors and the corrections have been approved by the West Virginia Commission and its staff. *Id.* We note that interested parties have had ample opportunity to comment on these minor rate adjustments, and no party has objected to these rate adjustments. Under the circumstances, we find that waiver of our complete-as-filed rule is also warranted with respect to Verizon's West Virginia rate adjustments.

²⁷⁴ FiberNet Comments at 44.

²⁷⁵ FiberNet Reply at 3. FiberNet argues that the October 15, 2002 Joint Stipulation **does** not actually lower any existing UNE rate but merely shifts around certain wire centers into different density cells, and creates a new density cell 3 with an unsupported rate of \$35.00. *Id.* See also FiberNet Comments at 45. FiberNet notes that the loop rates in density cells 1 and 2 remain unchanged. FiberNet Reply at 4.

²⁷⁶ FiberNet Comments at 43-44. In response, Verizon argues that West Virginia costs are among the highest in the former Bell Atlantic region. Verizon Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl., para. 40. Specifically, Verizon notes that in 2001, West Virginia had the longest statewide average loop lengths of any state in the former Bell Atlantic region, *Id.*, para. 40 & Attach. 5. Verizon also explains that because West Virginia is more sparsely populated than other states in this region, Verizon must use more small cables and small digital loop carrier systems which cost more per line than their larger counterparts. *Id.*, para. 40.

²⁷⁷ AT&T notes that the switch usage rates adopted by the West Virginia Commission are the sum of usage rates determined by the Hatfield Model plus a separate charge for vertical features developed using Verizon's vertical feature add-on cost study methodology. AT&T Comments at 48. AT&T argues that the Hatfield Model switch costs include costs for vertical features activations, and adding a separate charge for vertical features produces a double recovery. *Id.*

cost is inconsistent with assumptions underlying the Hatfield Model used to generate Verizon's switching rates?"

68. We need not address the merits of either of these arguments by AT&T and FiberNet because they are premised on a review of the rates established by the West Virginia Commission in its 1997 rate proceeding. As we describe in detail below, the rates on which Verizon relies for West Virginia pass a benchmark comparison to New York.²⁷⁹ Accordingly, we conclude that it is unnecessary to determine whether the West Virginia Commission committed TELRIC errors in establishing UNE rates in the 1997 rate proceeding.

(b) Other **TELRIC** Issues

69. **Verizon's "No-Build/No Facilities" Policy.** AT&T contends that, in Maryland, Washington, D.C., and West Virginia, Verizon's "no-build facilities" policy for provisioning loops precludes a finding that Verizon's UNE rates comply with TELRIC.²⁸⁰ Specifically, AT&T argues that the loop cost studies submitted by Verizon and adopted by the applicable state commissions contained inputs and assumptions about network investment and plant rearrangement that are inconsistent with Verizon's "no-build" policy, under which Verizon rejects orders for loops when it claims no facilities are available and construction is required.²⁸¹ AT&T argues that it is a violation of the causation element of TELRIC to charge UNE prices

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Specifically, AT&T alleges that Verizon's development of vertical features costs uses a switch discount weighted entirely on the lesser discount available for purchase of growth equipment instead of the steeper, forward-looking discount available for replacement switches. *Id.* AT&T argues that this assumption is "at odds" with the switch cost assumptions underlying the Hatfield Model which implicitly incorporate the discount level attributable to new switch purchases. *Id.*

²⁷⁹

See Section IV.A.3.b.iii (Benchmark Analysis), *infra*. FiberNet asserts that the Joint Stipulation does not cure the TELRIC deficiency in Verizon's UNE rates. FiberNet states that while the Joint Stipulation "sounds good on its face," it does not actually lower any existing UNE rate, but merely "shifts around certain wire centers into different Density Cells and creates a new Density Cell 3" with an unsupported rate of \$35.00. FiberNet Comments at 45. As described more fully in Section IV.A.3.b.iii (Benchmark Analysis), *infra*, Verizon's West Virginia average loop rates pass a benchmark comparison to New York and therefore, we need not address this alleged TELRIC violation.

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See AT&T Comments at 43-44; AT&T Reply at 34-35

²⁸¹

AT&T Comments at 44; AT&T Reply at 34. According to AT&T, the cost studies in all three states "contained growth and fill factors, assumptions that multiple vintages of investment would occur, and assumed expenditures for rearrangement and reconfiguration of the outside plant. The fundamental assumption underlying these inputs was that Verizon would expand its network to accommodate forecasted growth in demand." AT&T Comments at 44; AT&T Reply at 34. AT&T further argues that modifying these assumptions to be consistent with a "no-build" policy would result in a substantial reduction in loop costs. AT&T Comments at 44; AT&T Reply at 34. See also AT&T Comments, Declaration of Michael R. Baranowski, paras. 9-14 (detailing the cost study inputs that provide for investment in new facilities, spare capacity, and expenditures for rearrangement) (AT&T Baranowski Decl.). *But see* Verizon Application Reply App. A, Tab C, Joint Reply Declaration of William R. Roberts, Marie C. Johns, Gale Y. Given, Patrick A. Garzillo, Marsha S. Prosini, and Gary E. Sanford Regarding Maryland, Washington, D.C., and West Virginia (Verizon Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl.), paras. 15-18 (disputing AT&T's claims that the inputs in the cost models are inconsistent with Verizon's provisioning policy).

that attribute to UNEs the costs of capacity and other costs that Verizon does not incur in provisioning those UNEs.²⁸² Verizon disagrees, and argues that the inputs in the cost models are consistent with Verizon's provisioning policy.²⁸³

70. Regardless of whether the inputs and assumptions used in the loop cost studies in each jurisdiction under consideration here are consistent with Verizon's current "no-build" policy, we need not address the merits of this argument here?" In its application, Verizon does not rely on the loop rates established by the state commissions in their various cost dockets.²⁸⁵ Rather, Verizon relies on reduced loop rates in all three jurisdictions,²⁸⁶ and demonstrates that these loop rates pass a benchmark analysis to New York loop rates.²⁸⁷ As we have stated previously, the purpose of our benchmark analysis is to determine that a rate, despite potential TELRIC errors, falls within the range that a reasonable application of TELRIC principles would produce.²⁸⁸ Thus, even assuming that AT&T could demonstrate a TELRIC error arising from Verizon's "no-build" policy, we find, as we explain below, that Verizon's loop rates in Maryland, Washington, D.C., and West Virginia fall within the range of rates that a reasonable application of TELRIC principles would produce rendering the question moot.²⁸⁹

71. Entrance **Facility** Rates. Starpower argues that Verizon should be prohibited from charging any entrance facilities rate element that "unjustifiably increases UNE rates above TELRIC-based rates in the jurisdictions covered by the Application" before it receives section 271 authority.²⁹⁰ Noting that Verizon recently added a new entrance facilities rate for dedicated transport in New York, Starpower asserts that the rate was not the subject of any substantive review by the New York Commission and asserts that Verizon's rate structure in Maryland,

²⁸² AT&T Comments at 44. In the *Local Competition First Report and Order*, the Commission stated that, under the TELRIC pricing methodology, costs must be attributed on a cost-causative basis. *Local Competition First Report and Order*, 11 FCC Rcd at 15 851, para. 691.

²⁸³ See Veriwn **Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl.**, paras. 15-18

²⁸⁴ Because we do not address the merits of this argument here, we need not consider the recent findings of the Virginia State Corporation Commission concerning Veriwn's current provisioning policy and its affect on TELRIC prices. See AT&T Reply at 35 and Attach. B at 27-38, 43-44.

²⁸⁵ See Verizon **Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl.**, paras. 13-14.

²⁸⁶ See Section IV.A.3.a (Background), *supra* (discussing reduced rates in each jurisdiction under consideration here).

²⁸⁷ See Section IV.A.3.b.iii (Benchmark Analysis), *infra*.

²⁸⁸ See, e.g., *Verizon New Jersey Order*, 17 FCC Rcd at 12295, para. 49 (when a state commission does not apply TELRIC principles or does so improperly, the Commission will look to rates in other section 271-approved states to determine whether the applicant's rates nonetheless fall within a range that a reasonable TELRIC-based rate proceeding would produce). See also *WorldCom v. FCC*, 308 F.3d 1,4 (D.C. Cir. 2002).

²⁸⁹ See Section IV.A.3.b.iii (Benchmark Analysis), *infra* (discussing the benchmark analysis).

²⁹⁰ Starpower/US LEC Comments at 24

Washington D.C., and West Virginia may “similarly include unwarranted entrance facilities charges.””” While noting that “entrance facilities appear to be separate rate elements in the UNE rate structures in effect in those jurisdictions,” Starpower states that “[i]t is not apparent that any substantive analysis of the propriety of an entrance facilities rate element was undertaken by the respective **commissions**.”²⁹² Starpower argues that the inclusion of entrance facilities costs in the dedicated transport rate may significantly increase the cost of dedicated transport in violation of **TELRIC**.²⁹³ Verizon responds that it is unclear what Starpower is alleging with the entrance facility rates in the three **jurisdictions**.²⁹⁴ Verizon points out that the Maryland and District of Columbia rates will be superceded once these commissions issue their respective final rate orders.²⁹⁵ Verizon further notes that the West Virginia entrance facility rates were part of the West Virginia Gap/Remand/Merger Joint Stipulation and no party objected to the entrance facility rates at that time despite the opportunity to do so.²⁹⁶ Verizon also rejects Starpower’s assertion that the New York Commission did not review or approve the entrance facility rate in New York.²⁹⁷

72. Starpower acknowledges that entrance facilities appear to be separate rate elements in the UNE rate structures in effect in the three **jurisdictions**.²⁹⁸ If Starpower had an objection to these rates, it should have challenged them before the various state commissions at that time, but it does not appear to have done so. Nor has Starpower alleged in this proceeding any specific TELRIC error in any of the entrances facilities rates at issue. Starpower’s challenge to the entrance facility rate set by the New York Commission is beyond the scope of this proceeding. Therefore, in the absence of evidence that the Maryland, Washington D.C., or West Virginia Commissions clearly erred in adopting their respective entrance facility rates, **we** reject Starpower’s challenge.

(iii) Benchmark Analysis

73. States have considerable flexibility in setting UNE rates, and certain flaws in a cost study, by themselves, may not result in rates that are outside the reasonable range that correct application of TELRIC principles would produce?” The Commission has stated that,

²⁹¹ *Id.* at 24-25.

²⁹² *Id.* at 25.

²⁹³ *Id.*

²⁹⁴ Verizon Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl., para. 20

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*, para. 21.

²⁹⁸ See StarpowerRIS LEC Comments at 25.

²⁹⁹ VerizonRhode Island Order, 17 FCC Rcd at 33 19-20, para. 37.

when a state commission has not applied TELIUC principles or has done so improperly, then we will look to rates in other section 271-approved states to see if the rates under review nonetheless fall within the range that a reasonable application of TELIUC principles would produce.³⁰⁰ In comparing the rates, the Commission has used its USF cost model to take into account the differences in the underlying costs between the applicant state and the comparison state." To determine whether a comparison with a particular state is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant.³⁰²

74. In its application, Verizon relies on a benchmark comparison to its UNE rates in New York in order to demonstrate that its UNE rates in Maryland, Washington, D.C., and West Virginia fall within the range that a reasonable application of TELIUC principles would produce?" We note that, in every other section 271 proceeding where Verizon has relied on a benchmark analysis to demonstrate that its UNE rates fall within the TELFUC range, we have agreed with Verizon and commenters that New York is an appropriate anchor state for purposes of a benchmark analysis." We agree with Verizon that New York is an appropriate benchmark state,) and, significantly, no commenter contends otherwise.³⁰⁶ In our *Rhode Island Order*, we

³⁰⁰ See *id.* at 3320, para. 38; *VerizonPennsylvania Order*, 16 FCC Rcd at 17456-57, para. 63; see also *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82. In the *Verizon Pennsylvania Order*, we found that several of the criteria should be treated as indicia of the reasonableness of the comparison. *VerizonPennsylvania Order*, 16 FCC Rcd at 17457, para. 64.

³⁰¹ See *VerizonMassachusetts Order*, 16 FCC Rcd at 9000, para. 22; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20746, para. 57; *VerizonPennsylvania Order*, 16 FCC Rcd at 17457, para. 65; see also *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

³⁰² See *VerizonRhode Island Order*, 17 FCC Rcd at 3320, para. 38; *SWBT Arkansas/Missouri Order* 16 FCC Rcd at 20746, para. 56; *VerizonPennsylvania Order*, 16 FCC Rcd at 17457, para. 63; *VerizonMassachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

³⁰³ See Verizon Application at 47-49, 52-53, 56-57, 61-62; Verizon Johns/Garzillo/Prosini Decl., paras. 45-47; Verizon Roberts/Garzillo/Prosini Decl., paras. 63-65; Verizon Given/Garzillo/Sanford Decl., paras. 62-64.

³⁰⁴ See, e.g., *VerizonPennsylvania Order*, 16 FCC Rcd at 17457, para. 64; *VerizonRhode Island Order*, 17 FCC Rcd at 3320, para. 39; *Application by VerizonNew England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a VerizonEnterprise Solutions), Verizon Global Networks Inc., and VerizonSelect Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02-61, Memorandum Opinion and Order, 17 FCC Rcd 11659, 11679, para. 32 (2002) (*VerizonMaine Order*); *VerizonNew Jersey Order*, 17 FCC Rcd at 12296, para. 50; *Verizon Virginia Order*, FCC Rcd at 21931-32, para. 92.

³⁰⁵ Prior to the Bell Atlantic/NYNEX merger, New York and the three applicant states were served by different BOCs: New York was served by NYNEX and Maryland, Washington, D.C., and West Virginia were served by Bell Atlantic. The Commission has determined previously that such a comparison is appropriate nonetheless. In the *Verizon Pennsylvania Order*, the Commission clarified that the most important factor in determining whether a comparison with a particular state is reasonable is whether the Commission has found the anchor state's rates to be TELRIC-compliant because without this factor, the benchmark comparison loses all significance. *Verizon* (continued...)

commended the New York Commission for the thoroughness of its recent rate proceeding and found that New York continues to be an appropriate benchmark state.)” In light of that conclusion and the absence of any objection from the commenters, we conclude that it is appropriate to rely on New York for our benchmark comparison here.

75. Below, we first address an argument by AT&T regarding Verizon’s “no-build/no-facilities” provisioning policy, an argument that potentially affects the propriety of our benchmark analysis for all three of the jurisdictions at issue here. We then discuss separately the results of our benchmark comparison to New York for each of the three jurisdictions. Finally, we address an argument raised by AT&T in West Virginia regarding the structure of our non-loop benchmark analysis.

76. **Verizon’s “No-Build/No-Facilities” Policy.** We disagree with AT&T that Verizon’s current “no-build/no-facilities” provisioning policy in Maryland, Washington, D.C., and West Virginia precludes us from finding that Verizon’s loop rates in these states are TELRIC-compliant based on a benchmark comparison to Verizon’s New York loop rates.³⁰⁸ AT&T argues that a meaningful benchmark comparison must consider “comparable facilities or services” and that Verizon’s current provisioning policy renders a loop both less costly to provide and less valuable to the purchaser “than the Commission and the New York Public Service Commission understood Verizon to be providing during the New York 271 proceeding.”³⁰⁹ AT&T explains that, in the New York proceeding, the purchase of a loop by a competitive LEC was thought to include the implicit right to purchase additional loops at the same price, whereas Verizon’s current provisioning policy in all three jurisdictions under consideration here affords no comparable right.” AT&T states that “there is nothing in the

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Pennsylvania Order, 16 FCC Rcd at 17457, para. 64. The remaining criteria supporting a benchmark (*i.e.*, a common BOC, geographic similarities, and similar rate structure), do not rise to this same level of importance. *Id.* Thus, although the other criteria are useful to assure us that a comparison is meaningful, the absence of any one of these other criteria does not render a comparison meaningless. *See id.* In the **Verizon Pennsylvania Order**, the Commission permitted a benchmark comparison of Verizon’s Pennsylvania rates to its New York rates. *Id.* Pennsylvania, like the present applicant states, was part of Bell Atlantic.

³⁰⁶ AT&T does contend, however, that Verizon’s “no-build/no-facilities” policy precludes the Commission from finding that Verizon’s loop rates in Maryland, Washington, D.C., and West Virginia benchmark with Verizon’s New York rates. *See* discussion *infra*, paras. 76-78.

³⁰⁷ **Verizon Rhode Island Order**, 17 FCC Rcd at 3324-27, paras. 48-53.

³⁰⁸ AT&T Comments at 45.

³⁰⁹ *Id.*; *see* AT&T Baranowski Decl., para. 7. *See also* Letter from David M. Levy, Attorney, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1-2 (filed Jan. 17, 2003) (providing additional information concerning AT&T’s claim that Verizon’s “no-build/no-facilities” policy applies to DSO or voice grade loops) (AT&T Jan. 17 *Ex Parte* Letter on “no-build/no-facilities” policy).

³¹⁰ AT&T Comments at 45; *see* AT&T Baranowski Decl., para. 7. According to AT&T, the option of supplying additional loops on demand has both a cost to Verizon and a value to competitive LECs. AT&T Comments at 45; AT&T Baranowski Decl., para. 8.

subsequent Phase II UNE decisions of the New York PSC and its hearing examiner to suggest that the current New York rates reflect any changed understanding of Verizon's loop provisioning policies.³¹¹ Thus, according to AT&T, the New York loop rates were set assuming a "build" policy and Verizon has now changed that policy. AT&T maintains that, under the current "no-build/no-facilities" policy, Verizon expansively defines routine provisioning tasks as "construction" in the context of orders for high-capacity loops.³¹² According to AT&T, the loop provisioning policies now enforced by Verizon are at odds with the provisioning policies that the New York Commission believed to apply when it was reviewing Verizon's rates."

77. We reject AT&T's claim that Verizon's current loop provisioning policy in Maryland, Washington, D.C., and West Virginia precludes us from finding that Verizon's loop rates in these jurisdictions are TELRIC-compliant based on a benchmark comparison to Verizon's New York loop rates. The crux of AT&T's argument is that Verizon's New York loop rates can no longer be used as benchmark rates because they were "set and upheld on assumptions that can no longer apply to Verizon loops in the region."³¹³ In the *Verizon Rhode Island Order*, the Commission determined that Verizon's rates now in effect in New York were appropriate benchmark rates because they fell within a reasonable TELRIC range.³¹⁴ We recognize that the New York rates may have been established based upon assumptions and inputs that, in light of Verizon's current provisioning policy, may require some adjustment, but such potential input flaws, by themselves, do not necessarily result in rates that are outside the reasonable range that a correct application of our TELRIC rules would produce. Although AT&T now suggests that Verizon's New York loop rates are no longer appropriate benchmark rates, it fails to demonstrate that those rates no longer fall within a reasonable TELRIC range. In this regard, we note that, particularly in Maryland and West Virginia, loop rates are still well below the level that might be justified under our benchmark analysis of the relative costs.³¹⁶

³¹¹ AT&T Comments at 46 n.65; see AT&T Baranowski Decl., para. 8.

³¹² AT&T Comments at 20. For instance, AT&T claims that routine and minor tasks such as, but not limited to, installing a repeater shelf, providing an apparatus/doubler case, adjusting the multiplexer to increase capacity, and placing a riser cable or a buried drop wire are considered "additional construction" by Verizon. Id.

³¹³ Id. at 46. AT&T argues that "Verizon's rates in New York were set and upheld on assumptions that can no longer apply to Verizon's loops in the region." Id.

³¹⁴ AT&T Comments at 46. AT&T does not appear to be arguing that differences in provisioning practices between New York and the applicant states undermine any benchmark comparison. Indeed, AT&T appears to concede that the change in Verizon's provisioning policy occurred simultaneously throughout the Verizon region, but argues that such a fact is "beside the point." AT&T Comments at 45. If AT&T is arguing that differences in provisioning practices between New York and the applicant states could undermine a benchmark comparison of those states' rates, we note that the record in this proceeding does not support a finding that there are in fact any such differences. See Verizon Reply at 20 (stating that at no point in time has Verizon's facilities policy in New York differed from its policy in the three jurisdictions at issue here).

³¹⁵ See *Verizon Rhode Island Order*, 17 FCC Rcd at 3326-27, para. 53.

³¹⁶ See *infra* notes 327 & 334 (providing the benchmark calculations for the loop rates in Maryland and West Virginia).

Indeed, AT&T offers nothing more than general assertions about the effect of Verizon's provisioning policy on its loop rates.³¹⁷ It fails to calculate what the loop rates would be if the inputs and assumptions used in the loop cost studies were adjusted to account for the current provisioning policy.³¹⁸ Without this type of information, we cannot assess the magnitude of any alleged effect Verizon's provisioning policy has on its New York loop rates.³¹⁹ Therefore, based on the evidence in the record, we find the New York rates remain a valid benchmark here.

78. As we noted in ruling on Verizon's most recent prior section 271 application, the issues that AT&T raises with respect to Verizon's loop provisioning practices are currently under review in our *Triennial Review* proceeding.³²⁰ Indeed, the Commission took action on February 20, 2003, to revise its rules concerning incumbent LECs' obligations in this regard, and the order will be released in the near future.³²¹ We previously declined to address, in a section 271 proceeding, an alleged flaw with a benchmark rate when that precise rate is the subject of a collateral proceeding,³²² and the D.C. Circuit upheld that action.³²³ Should AT&T continue to find fault with Verizon's loop rates in the wake of the *Triennial Review* decision – either the rates in New York or those in the other three jurisdictions at issue here – it may assert its arguments in a section 271(d)(6) complaint proceeding, where it will have the opportunity to build a more complete record than it has provided to us in the current proceeding.³²⁴ For these reasons, we conclude that Verizon's "no-build/no-facilities" loop provisioning policy does not preclude us from finding that Verizon's loop rates in these jurisdictions are TELRIC-compliant based on a benchmark comparison to Verizon's New York loop rates.

³¹⁷ See AT&T Comments at 47.

³¹⁸ See AT&T Baranowski Decl., para. 9 (stating only that correcting the cost study inputs and assumptions to reflect Verizon's provisioning policy would "result in a substantial reduction in UNE loop rates").

³¹⁹ Cf. *BellSouth Florida/Tennessee Order*, 17 FCC Rcd at 25679-80, paras. 60-62.

³²⁰ See *Verizon Virginia Order*, 17 FCC Rcd at 21959, para. 141 & n.492.

³²¹ A press release issued by the Commission at the time it voted on the item states that incumbent LECs "are required to make routine network modifications to UNES used by requesting carriers where the requested facility has been constructed" and that incumbent LECs are required "to condition loops for the provision of xDSL services." See *Triennial Review News Release* Attach. at 3.

³²² See *Verizon/Massachusetts Order*, 16 FCC Rcd at 9003 para. 31 ("It would be unreasonable to preclude incumbent LECs from relying on appropriate rates that have been found to be TELRIC-compliant merely because these rates are under some form of challenge or review where there has not been a determination that those rates are not TELRIC-compliant.").

³²³ See *WorldCom, Inc. v. FCC*, 308 F.3d 1, 7 (D.C. Cir. 2002) (approving Commission reliance on an allegedly flawed switching rate from benchmark state when both benchmark and applicant states were "actively review[ing]" rate at the time of the section 271 application); *id.* at 9 ("it is reasonable for the FCC to rely on the states' periodic rate revision process as a means of correcting flaws in adopted rates").

³²⁴ See *id.* at 9 (noting availability of section 271(d)(6) complaint to ensure that rates stay current).

79. Having determined that the New York rates are appropriate rates for the benchmark comparison, we compare Verizon's loop and non-loop UNE rates in Maryland, Washington, D.C., and West Virginia to its loop and non-loop rates in New York, and conclude that Verizon's UNE rates in these jurisdictions fall within the range that a reasonable application of TELRIC principles would produce.³²⁵

80. Maryland. In its application, Verizon relies on reduced UNE rates that the Maryland Commission ordered Verizon to adopt in the state section **271 proceeding**.³²⁶ Because these rates are the result of specific rate reductions, we cannot conclude that Verizon's Maryland UNE rates are the result of a TELRIC-based rate proceeding. The fact that Verizon's Maryland UNE rates pass a benchmark comparison to Verizon's New York UNE rates provides a basis for our finding that, despite the fact that the UNE rates are not the result of a TELRIC-based rate proceeding, Verizon's Maryland UNE rates fall within the range that a reasonable application of TELRIC principles would produce. Taking a weighted average of Verizon's loop rates in Maryland and New York, we find that Verizon's Maryland loop rates satisfy our benchmark analysis and the requirements of checklist item 2.³²⁷ We also conduct a benchmark analysis of Verizon's Maryland non-loop UNE rates. We compare Verizon's Maryland non-loop rates to the New York non-loop rates using our benchmark analysis and find that Verizon's Maryland

³²⁵

In our benchmark analysis of Verizon's non-loop UNE prices, we compare **(1)** the percentage difference between the applicant state and New York UNE-platform per-line, per-month prices for non-loop rate elements collectively, and **(2)** the percentage difference between the applicant state and New York per-line, per-month costs for these non-loop elements collectively, based on the Synthesis Model. We adjust the costs derived from the Synthesis Model to make them comparable to UNE-platform costs. See Verizon *Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 n.249. For purposes of this comparison, UNE-platform non-loop rate elements are line port, end office switch usage, common transport (including tandem switching), and signaling. We note that Verizon's New York non-loop rates contain both a digital and an analog port rate. For purposes of our benchmark analysis, we have used Verizon's New York digital port rate of **\$2.57**, rather than the analog port rate of **\$4.22**, or any blend of the two rates. The New York rate structure uses the digital port rate of **\$2.57** as the rate charged for ports that are purchased as part of the UNE-platform. We develop per-line per-month prices for these elements for the applicant state and New York separately by multiplying the state-approved "rates" by per-line demand estimates. State-approved rates for end office switching and transport are imposed on a MOU basis. We develop the per-line, per-month overall demand for these usage-sensitive rate elements for the applicant state and New York separately by first dividing total state-specific switched access lines into state-specific total annual MOU, based on dial equipment minutes (DEM), divided by **12** months. We then apply to each of the usage sensitive rate elements a percentage of this overall demand that is based on state-specific traffic assumptions supplied by Verizon regarding originating versus terminating, local intra-switch versus inter-switch, and tandem-muted versus direct-routed MOU.

³²⁶

See Verizon Application at **47, 52**; Verizon *Roberts/Garzillo/Prosini Decl.*, paras. **64-65**. See *also* Maryland Commission Comments, Ex. A at **9**.

³²⁷

Verizon's Maryland loop rates are **5.19** percent higher than New York loop rates. Comparing the weighted average costs, we find that the Maryland loop costs are **26.40** percent higher than the New York loop costs. Because the percentage difference between Verizon's Maryland loop rates and the New York loop rates does not exceed the percentage difference between Verizon's Maryland loop costs and Verizon's New York loop costs, we conclude that Verizon's Maryland loop rates satisfy our benchmark analysis.

non-loop rates satisfy our benchmark **analysis**.³²⁸ **Thus**, we find that Verizon has demonstrated that its Maryland UNE rates satisfy the requirements of checklist item 2.

81. **washington, D.C.** In its application, Verizon relies on reduced UNE rates set forth in an amendment to its interconnection agreement with Paetec Communications, **Inc.**³²⁹ The D.C. Commission recently approved the amendment and Verizon is offering the reduced UNE rates to all requesting carriers in Washington, **D.C.**³³⁰ Because these rates are the result of specific rate reductions, we cannot conclude that Verizon's Washington, D.C. UNE rates are the result of a TELRIC-based rate proceeding. The fact that Verizon's Washington, D.C. UNE rates pass a benchmark comparison to Verizon's New York UNE rates provides a basis for our finding that, despite these alleged errors, Verizon's Washington, D.C. UNE rates fall within the range that a reasonable TELRIC-based rate proceeding would produce.

82. Having determined above that the New York rates are appropriate rates for the benchmark comparison, we compare Verizon's Washington, D.C. loop rates to the New York loop rates using our benchmark analysis. Taking a weighted average of Verizon's loop rates in Washington, D.C. and New York, we find that Verizon's Washington, D.C. loop rates satisfy our benchmark analysis and the requirements of checklist item 2.³³¹ We also conduct a benchmark analysis of Verizon's Washington, D.C. non-loop UNE rates. We compare Verizon's Washington, D.C. non-loop rates to the New York non-loop rates using our benchmark analysis and find that Verizon's Washington, D.C. non-loop rates satisfy our benchmark **analysis**.³³² **Thus**, we find that Verizon has demonstrated that its Washington, D.C. UNE rates satisfy the requirements of checklist item 2.

³²⁸

Verizon's Maryland non-loop rates are **4.50** percent higher than New York non-loop rates. Comparing the weighted average costs, we find that Verizon's Maryland non-loop costs are **4.58** percent higher than Verizon's New York non-loop costs. Because the percentage difference between Verizon's Maryland non-loop rates and the New York non-loop rates does not exceed the percentage difference between Verizon's Maryland non-loop costs and Verizon's New York non-loop costs, we conclude that Verizon's Maryland non-loop rates satisfy our benchmark analysis.

³²⁹

See Verizon Jan. 24 Ex Parte Letter on pricing issues Attach. 1.

³³⁰

See *id*

³³¹

Verizon's Washington, D.C. loop rates are **26.17%** lower than New York loop rates. Comparing the weighted average costs, we find that the Washington, D.C. loop costs are **26.07%** lower than the New York loop costs. Because the percentage by which Washington, D.C. loop rates fall below New York loop rates exceeds the percentage by which Washington, D.C. loop costs fall below New York loop costs, we conclude that Verizon's Washington, D.C. loop rates satisfy our benchmark analysis.

³³²

Verizon's Washington, D.C. non-loop rates are **4.85%** higher than New York non-loop rates. Comparing the weighted average costs, we find that Verizon's Washington, D.C. non-loop costs are **30.87%** higher than Verizon's New York non-loop costs. Because the percentage difference between Verizon's Washington, D.C. non-loop rates and the New York non-loop rates does not exceed the percentage difference between Verizon's Washington, D.C. non-loop costs and Verizon's New York non-loop costs, we conclude that Verizon's Washington, D.C. non-loop rates satisfy our benchmark analysis.

83. West Virginia. In its application, Verizon relies on reduced UNE rates arrived at through Joint Stipulations recently approved by the West Virginia Commission.” Because these rates are the result of specific rate reductions, we cannot conclude that Verizon’s West Virginia UNE rates are the result of a TELRIC-based rate proceeding. The fact that Verizon’s West Virginia UNE rates pass a benchmark comparison to Verizon’s New York UNE rates provides a basis for our finding that, despite these alleged errors, Verizon’s West Virginia UNE rates fall within the range that a reasonable TELRIC-based rate proceeding would produce.

84. Having determined above that the New York rates are appropriate rates for the benchmark comparison, we compare Verizon’s West Virginia loop rates to the New York loop rates using our benchmark analysis. Taking a weighted average of Verizon’s loop rates in West Virginia and New York, we find that Verizon’s West Virginia loop rates satisfy our benchmark analysis and the requirements of checklist item 2.³³⁴ We also conduct a benchmark analysis of Verizon’s West Virginia non-loop UNE rates. We compare Verizon’s West Virginia non-loop rates to the New York non-loop rates using our benchmark analysis and find that Verizon’s West Virginia non-loop rates satisfy our benchmark analysis.³³⁵ Thus, we find that Verizon has demonstrated that its West Virginia UNE rates satisfy the requirements of checklist item 2.

85. Switching-Only Benchmark in West Virginia. In addition to a non-loop benchmark analysis, AT&T argues that, in West Virginia, a switching-only benchmark analysis is necessary.³³⁶ According to AT&T, it is appropriate to consider a switching-only benchmark analysis when our benchmark analysis compares a relatively dense state with a less densely populated state because the Synthesis Model substantially overstates transport costs in less densely populated states relative to more densely populated states?” AT&T concludes that, as a

³³³ See Section. IV.A.3.a (Background), *supra*

³³⁴ Verizon’s West Virginia loop rates are 77.38% higher than New York loop rates. Comparing the weighted average costs, we find that the West Virginia loop costs are 149.83% higher than the New York loop costs. Because the percentage difference between Verizon’s West Virginia loop rates and the New York loop rates does not exceed the percentage difference between Verizon’s West Virginia loop costs and Verizon’s New York loop costs, we conclude that Verizon’s West Virginia loop rates satisfy our benchmark analysis.

³³⁵ Verizon’s West Virginia non-loop rates are 38.68% higher than New York non-loop rates. Comparing the weighted average costs, we find that Verizon’s West Virginia non-loop costs are 44.76% higher than Verizon’s New York non-loop costs. Because the percentage difference between Verizon’s West Virginia non-loop rates and the New York non-loop rates does not exceed the percentage difference between Verizon’s West Virginia non-loop costs and Verizon’s New York non-loop costs, we conclude that Verizon’s West Virginia non-loop rates satisfy our benchmark analysis.

³³⁶ AT&T Comments, Attach. Declaration of Michael Lieberman, para. 20 (stating that such an analysis should exclude the costs of transport facilities from the benchmark analysis) (AT&T Lieberman Decl.). In its comments, AT&T argues that the Commission should consider a switching-only benchmark comparison as well as an aggregate non-loop analysis or, alternatively, consider whether Verizon’s non-transport, non-loop rates were set in compliance with TELRIC. AT&T Comments at 53. See also AT&T Comments at 52 (arguing that the Commission should directly scrutinize the reasonableness of Verizon’s switching costs).

³³⁷ AT&T Lieberman Decl., paras. 7-14. AT&T maintains that, because the Synthesis Model overstates transport costs in every state, the model gives disproportionate weight to transport costs in any benchmarking analysis. (continued...)

result, any comparison substantially overstates the cost justification for aggregate, non-loop rate differences.³³⁸ AT&T also argues that TELRIC rates are calculated on the basis of individual elements and that Verizon must show that the rates for *each* of its UNEs complies with TELRIC principles.³³⁹ AT&T raised these same arguments in the Verizon Virginia section 271 proceeding.³⁴⁰

86. For the reasons stated below and consistent with our conclusions in the *Verizon Virginia Order?*³⁴¹ we reject AT&T's argument that alleged flaws in the Synthesis Model require Verizon to satisfy a switching-only benchmark analysis. Specifically, we reject AT&T's evidence of alleged bias in the Synthesis Model. We also reject AT&T's claim that the Commission must abandon its long-standing practice of benchmarking non-loop rates in the aggregate in this case and examine switching rates in isolation.

87. As we noted in the *Verizon Virginia Order*, the Commission developed an extensive record through a rulemaking proceeding over several years to support its conclusion that the Synthesis Model accurately reflects the relative cost differences between states.³⁴² The differential produced by the cost model reflects variations in forward-looking costs based on objective criteria, such as density zones and geological conditions.³⁴³ AT&T was an active

(Continued from previous page)

According to AT&T, the problem is most acute, however, when the anchor benchmark state has significantly higher average line densities than the applicant state. AT&T Comments at 52; AT&T Lieberman Decl., Ex. 2.

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AT&T Liebenan Decl., para. 10.

³³⁹

AT&T Comments at 50-51. In support of its argument that the Commission must look at the rates for each individual element, AT&T cites to section 252(d)(1), which states that a BOC's rates for a network element comply with checklist item 2 only if they are "based on the cost . . . of providing . . . the network element." AT&T Comments at 50 (citing 47 U.S.C. § 252 (d)(1)). AT&T also cites to section 271(c)(2)(B)(v), which requires the Bell companies to offer "[l]ocal transport **from** the trunk side of a wireline local exchange carrier switch **unbundled from ofherswitching or other services,**" and section 271(c)(2)(B)(vi) which requires Bell companies to offer "[l]ocal switching **unbundled from transport, local loop transmission, or ofherservices.**" 47 U.S.C. §§ 271(c)(2)(B)(v) and (vi) (emphasis in AT&T Comments).

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See generally AT&T Supplemental Comments filed in the *Verizon VirginiaSection271 Proceeding*, WC Docket No. 02-214 (filed Oct. 9, 2002).

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Verizon Virginia Order, 17 FCC Rcd at 21937-44, paras. 101-111.

³⁴²

See *SWBT Kansas/Oklahoma*, 16 FCC Rcd at 6277, para. 84; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20455-56, paras. 41-42 (1999), *aff'd in part and rev'd in part on other grounds*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001). AT&T argues that the "extensive record" developed in the rulemaking proceeding leading to the adoption of the Synthesis Model provides no justification for relying on the model because the rulemaking proceeding concerned universal service subsidy calculations, in which relative differences in transport costs play a relatively small part. AT&T Comments at 54. The fact that transport costs represent a relatively small part of the universal service subsidy calculation produced by the Synthesis Model does not, by itself, suggest that the model does not accurately reflect transport costs or transport cost differences.

³⁴³

See *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45 and 97-160, Tenth Report and Order, 14 FCC Rcd 20156, 20170, para. 30 (1999), *aff'd*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

participant in that rulemaking. Our Synthesis Model, like any model, may not be **perfect**.³⁴⁴ It is, however, the best tool we have for evaluating cost differences between states.)” In fact, in the context of universal service, AT&T has supported the Synthesis Model before the Commission and before the appellate courts.³⁴⁶ Significantly, AT&T developed the transport module of the Synthesis Model and has championed it for ratemaking purposes in numerous states, including Virginia.”” Our skepticism about AT&T’s arguments is thus well-founded: AT&T appears to be willing to support the model where the model favors its desired outcome but rejects the model where the model does not.

88. As we observed in the *Verizon Virginia Order*, a re-examination of the Synthesis Model is an immensely complicated inquiry not suited to the section 271 **process**.³⁴⁸ We could not consider AT&T’s argument in isolation as we would have to consider other arguments concerning the accuracy of the Synthesis Model, including those raised by Verizon that the Synthesis Model understates switching costs in rural states.)” Given its complexity, breadth, and industry-wide significance, such **an** inquiry is simply not feasible within the 90-day review

³⁴⁴ As the D.C. Circuit has noted “[t]he best must not become the enemy of the good.” *MCI Telecom. v. FCC*, 712 F.2d 517,535 (D.C. Cir. 1983) (quoting *MCI Telecom. Corp. v. FCC*, 627 F.2d 322,341 (D.C. Cir. 1980)).

³⁴⁵ *Verizon New Hampshire/Delaware Order*, 17 FCC Rcd at 18689, para. 47. Although AT&T suggests that the Synthesis Model “is clearly not the best available tool in the particular circumstances here,” it argues, in that same paragraph, that the Commission should **use** the Synthesis Model to compare switching-only costs. AT&T Comments at 55. Thus, AT&T is content to rely on the Synthesis Model to compare relative costs, it just disagrees with the level of cost aggregation. See para. 96, *infra*. See also *WorldCom, Inc. v. FCC*, 308 F.3d 1, 7 (D.C. Cir. 2002) (“FCC need not choose the ‘optimal’ benchmark, only a reasonable one”).

³⁴⁶ See *Qwest Corporation v. FCC*, 258 F.3d 1191, 1206 (10th Cir. 2001) (affirming the Commission’s decision to adopt the Synthesis Model in the context of universal service).

³⁴⁷ In the Virginia state rate proceeding, AT&T and WorldCom submitted the Hatfield model (version 3.0), which is a prior version **of** the HAI cost model, the model from which the Synthesis Model’s transport module derives.

³⁴⁸ *Verizon Virginia Order*, 17 FCC Rcd at 21940, para. 105. AT&T argues that this observation “misses the point.” AT&T Comments at 56. AT&T concedes that any attempt to identify and resolve the alleged defect in the transport cost module of the Synthesis Model is beyond the scope of this proceeding. *Id.* at 53. Nevertheless, AT&T urges the Commission to “recogniz[e] that the Model suffers from error in the particular circumstances of this case, and reconsider[] whether **an** aggregate non-loop benchmark should remain the exclusive test of TELRIC compliance in these circumstances.” *Id.* at 56. The relief sought by AT&T would be necessary only upon a finding that the Synthesis Model does not in all circumstances accurately reflect cost differences. Given that the Synthesis Model is designed to account for relative cost differences between states for the purpose of apportioning universal service support, we are not persuaded by AT&T’s attempt to downplay the potential implications of the conclusion inherent in the relief sought, especially since such a conclusion would have industry-wide significance **beyond** the section 271 application process.

³⁴⁹ See Verizon Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl., para. 37. See also *Verizon New Hampshire/Delaware Order*, 17 FCC Rcd at 18690-91, para. 49 (discussing Verizon’s claim that the Synthesis Model understates switching costs in some instances).

period required by Congress.³⁵⁰ As the Commission made clear in the SWBT *Texas* Order, Congress designed section 271 proceedings as “highly specialized, 90-day proceedings for examining the performance of a particular carrier in a particular [s]tate at a particular time. Such fast-track, narrowly focused adjudications. . . are often inappropriate forums for the considered resolution of industry-wide local competition questions of general applicability.”³⁵¹ Clearly, any conclusion concerning the ability of the Synthesis Model accurately to account for cost differences between states would have industry-wide significance, both with respect to local competition and universal service.³⁵² Accordingly, we decline to benchmark Verizon’s West Virginia switching rates independently based on a claim that the Synthesis Model fails to accurately reflect costs and, hence, cost differences.

89. AT&T points out that the UNE transport costs supported by Verizon in the Virginia Arbitration Proceeding³⁵³ are “only one-third as high as the estimates obtained by AT&T from the Synthesis Model” and argues that this amounts to a concession by Verizon that the Synthesis Model overstates transport costs.³⁵⁴ AT&T’s argument, however, ignores the critical difference between using the Synthesis Model (or any other model) to determine absolute UNE costs, and using it for the limited purpose of comparing relative cost differences between states. In section 271 proceedings, the Commission uses the Synthesis Model only for the latter purpose; we have not used the model to compare UNE rates set by a state commission to costs produced by the model. Indeed, the Commission has repeatedly cautioned against using the Synthesis Model to set rates.³⁵⁵ Moreover, the rates proposed by Verizon in the Virginia Arbitration Proceeding have no bearing on the merits of using the Synthesis Model to compare relative costs. Verizon sponsored its own models for determining UNE loop, switching, and transport rates. The fact that in one instance, transport, Verizon’s models produced rates less than those produced by the Synthesis Model is no more (or less) relevant to our use of the Synthesis Model for purposes of cost comparisons than is the fact that, in other instances (loops,

³⁵⁰ *Verizon New Hampshire/Delaware Order*, 17 FCC Rcd at 18690-91, para. 49. Indeed, even an evaluation of AT&T’s criticisms alone would be a complicated endeavor.

³⁵¹ *SWBT Texas Order*, 15 FCC Rcd at 18366, para. 25.

³⁵² *Verizon New Hampshire/Delaware Order*, 17 FCC Rcd at 18690-91, para. 49.

³⁵³ *See Petitions of WorldCom, Inc., Cox Virginia Telecom, Inc. and AT&T Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket Nos. 00-218, 00-249 and 00-251, DA 02-1731 (WCB rel. July 17, 2002) (*Virginia Arbitration Order*).

³⁵⁴ *Id.* at 56 (citing AT&T Reply, Reply Declaration of Michael R. Lieberman and Brian F. Pitkin, filed in the *Verizon New Hampshire/Delaware Section 271 Proceeding*, WC 02-157, paras. 18-19 (filed Aug. 12, 2002)).

³⁵⁵ *See Verizon Maine Order*, 17 FCC Rcd at 11675, para. 28 n.107; *Bell Atlantic New York Order*, 15 FCC Rcd at 4084-85, para. 245; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6277, para. 84.

switching), Verizon's models produced rates that greatly exceed those produced by the Synthesis Model.³⁵⁶

90. In support of its claim of bias, AT&T attaches to its comments a chart that purports to demonstrate that the estimates of transport costs generated by the Synthesis Model, while roughly comparable in higher density states to state-approved unbundled transport rates, climb above the latter values in the lower density states.³⁵⁷ AT&T charts how the ratio of transport costs to state-approved transport rates varies with line density, but it does not establish that this variation demonstrates any bias in the Synthesis Model. The state-approved unbundled transport rates used in AT&T's analysis could fall anywhere within the range of rates that a reasonable application of TELRIC principles would produce. Consequently, the ratio of transport costs derived from the Synthesis Model to state-approved transport rates may vary due to this range of rates.³⁵⁸ Rather than conclusively demonstrating the existence of any bias in the Synthesis Model, high ratios of transport costs to UNE transport rates may simply reflect the fact that some states have set transport rates at the high end of the reasonable range, while other states have set transport rates at the low end.³⁵⁹ Moreover, AT&T confines its analysis to seven of the 13 Verizon study areas (not counting Verizon's two wire centers in Connecticut and the former GTE operations), and excludes completely other BOC study areas. A sample of so few study areas may not produce a reliable measure of the relationship between the ratio of transport costs developed from the Synthesis Model to state-approved transport prices, on the one hand, and line density, on the other.³⁶⁰ We cannot agree, therefore, that AT&T's analysis provides a "clear qualitative demonstration" of the inverse relationship between line density and the overstatement of transport costs, as AT&T alleges.³⁶¹

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Additionally, we find AT&T's arguments about the Synthesis Model somewhat ironic, as it was AT&T that sponsored a modified version of the Synthesis Model to set transport rates in the Virginia Arbitration proceeding

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See AT&T Comments at 52; AT&T Lieberman Decl., Ex. 2

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WorldCom, Inc. v. FCC, 308 F.3d at 7.

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Indeed, AT&T has previously acknowledged that there are "variations among the costing approaches taken by each state commission in setting UNE prices" and that the values used in its analysis are "rough proxies." Letter from David M. Levy, Attorney for AT&T Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in the *Verizon Virginia Section 271 Proceeding*, WC Docket No. 02-214 at 3 (filed Oct. 23, 2002) (AT&T Oct. 23 Pricing Ex Parte Letter). See also *WorldCom, Inc. v. FCC*, 308 F.3d at 7 (TELRIC may yield a broad range of rates).

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See *Verizon Virginia Order*, 17 FCC Rcd at 21939, Para. 102. Although we made this same observation in the *Verizon Virginia Order*, AT&T has not presented any additional evidence in this proceeding.

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AT&T Comments at 52 n.75. AT&T urges the Commission to reconsider its conclusions in the *Verizon Virginia Order*, emphasizing the "magnitude of the switch benchmarking problem," in West Virginia. AT&T Lieberman Decl., para. 14. Specifically, AT&T notes that the ratio of transport costs derived from the Synthesis Model to West Virginia's current transport rates is 3.8 to one. See *id.*, Ex. 2. In the *Verizon Virginia Proceeding*, AT&T calculated the ratio of transport costs derived from the Synthesis Model to Virginia's transport rates as four to one. Thus, according to AT&T's own calculations, the magnitude of the alleged problem in West Virginia is not (continued.. .)

91. Further, although we do not dispute that TELRIC rates are calculated on the basis of individual elements, we find that conducting a benchmark analysis of non-loop elements together, as the Commission has done in all prior section 271 orders relying on a benchmark comparison, is consistent with our obligations under the Act. In adjudicating a section 271 application, the Commission performs a general assessment of compliance with TELRIC principles.³⁶² Our benchmark analysis is a method of making the general assessment as to whether UNE rates fall within the range of rates that a reasonable application of TELRIC principles would produce. We make only a general assessment of UNE rates in the context of a section 271 proceeding, as the Commission could not, as a practical matter, evaluate every single individual UNE rate relied upon in a section 271 proceeding within the 90-day timeframe. AT&T asks us to examine switching rates only, and makes its statutory arguments in that limited context: But, under AT&T's interpretation of the statute, the Commission may be required to evaluate individually every UNE rate relied upon in this proceeding. Given the large number of rates at issue in a section 271 proceeding³⁶³ and the 90-day timeframe, we find that our interpretation of our obligation under the statute is a reasonable one.³⁶⁴

92. Although AT&T cites to section 252(d)(1) and to section 271(c)(2)(B) in support of its current preferred version of the benchmark test,³⁶⁵ we note that only section 271(c)(2)(B)(ii) defines our role in this proceeding. Under that subsection, we must decide whether a BOC provides access to network elements "in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."³⁶⁶ In so deciding, we must exercise our judgment within the context of the compressed 90-day deadline imposed by section 271.) Under section 271, our role is to make a generalized decision as to whether network elements are available in

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as great as in Virginia despite the fact that West Virginia is a significantly less dense state with a line density of 52 lines per square mile as compared to Virginia's 200 lines per square mile. *Id*

³⁶² See *Sprint v. FCC*, 274 F.3d at 556; *AT&T Corp. v. FCC*, 220 F.3d at 615.

³⁶³ For instance, in support of its West Virginia section 271 application, Verizon filed 41 pages of rate sheets containing numerous rates on each sheet. See Given/Garzillo/Sanford Decl., Attach. 1-3.

³⁶⁴ Indeed, some states do not have separate rate elements for some UNEs that other states have. For example, New York has a separate rate element for signaling and end office trunk ports; however, New Jersey and Delaware include these elements in the per-minute switching rate. See, e.g., *Verizon New Jersey Order*, 17 FCC Rcd at 12297, para. 52. Performing aggregate benchmark comparisons of loop and non-loop elements, as we have done in the past, allows for meaningful rate comparisons when two states' specific rate structures may vary somewhat.

³⁶⁵ AT&T Comments at 50

³⁶⁶ 47 U.S.C. § 271(c)(2)(B)(ii).

³⁶⁷ Cf. *AT&T Corp. v. FCC*, 220 F.3d at 621-23; *WorldCom, Inc. v. FCC*, 308 F.3d at 7 (recognizing that the time constraints imposed by the 90-day limit preclude a full-scale ratemaking by the Commission).

accordance with section 252(d)(1). This is not, and cannot be, a *de novo* review of state-rate setting proceedings.³⁶⁸

93. In addition, as we stated in the *Verizon Virginia Order*, we do not believe that the statutory language supports AT&T's view that section 252(d)(1) clearly requires us to evaluate individually the checklist compliance of each UNE rate on an element-by-element basis. The relevant statutory provisions do not refer to the term "network element" exclusively in the singular and, thus, we do not believe that the statute unambiguously requires this Commission to perform a separate evaluation of the rate for each network element in isolation. Section 252(d)(1) states, in relevant part, that "[d]eterminations by a State commission of ... the just and reasonable rate for **network** elements for purposes of [section 251(c)(3)] ... shall be based on the cost ... of providing the ... network element." In addition, section 271(c)(2)(B)(ii) requires a BOC to provide "[n]ondiscriminatory access to **network** elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."³⁷⁰

94. Notably, AT&T's own proposed method of benchmarking is inconsistent with its argument that the text of the Act **requires** evaluating each element in isolation. Specifically, AT&T argues that the Commission should separately compare three categories of elements: loops, non-loop, and switching." Yet these categories – like the Commission's approach – entail aggregating distinct elements for benchmarking purposes: for example, AT&T's "switching" category includes costs associated with shared trunk ports and **signaling**.³⁷² Thus, AT&T concedes that some degree of aggregation is appropriate in conducting a benchmarking analysis but simply disagrees about the optimum level of aggregation. For the reasons set forth here and in our prior orders, we construe the statute to permit a BOC to show that it complies with checklist item 2 based on a benchmark analysis of non-loop elements in the aggregate.

95. Our long-standing practice of benchmarking non-loop rates in the aggregate is a reasonable exercise of our judgment in making the general assessment of whether rates fall within the reasonable range that application of TELRIC principles would produce." The benchmark test as presently constituted reflects the practicalities of how UNEs are purchased and used. Specifically, combining unbundled switching and unbundled transport for benchmarking purposes makes sense because competing LECs throughout Verizon's territory

³⁶⁸ *Sprint v. FCC*, 274 F.3d at 556. Our role is not to set UNE rates but, rather, to make a general assessment as to whether the rates set by the state comply with the statute. *Id.* See also *WorldCom, Inc. v. FCC*, 308 F.3d at 7.

³⁶⁹ 47 U.S.C. § 252(d)(1) (emphasis added).

³⁷⁰ 47 U.S.C. § 271(c)(2)(B)(ii) (emphasis added).

³⁷¹ See AT&T Comments at 53 (urging the Commission to perform an independent benchmark analysis of only Verizon's West Virginia switching rates in addition to the non-loop benchmark analysis).

³⁷² AT&T Lieberman Decl., para. 22.

³⁷³ See *Verizon Massachusetts Order*, 16 FCC Rcd at 9001, para. 25; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 66; *Verizon New Jersey Order*, 17 FCC Rcd at 12296, para. 51.

invariably purchase them **together**.³⁷⁴ Indeed, in the *UNE Remand Order*, the Commission acknowledged that “shared transport is technically inseparable from unbundled switching” and, thus, requesting carriers do not have the option of using unbundled shared transport without also taking unbundled **switching**.³⁷⁵ Although it is theoretically possible to purchase unbundled switching without taking unbundled transport, it is uncontroverted that no competitive LEC has ordered switching and shared transport independently in West Virginia or in any other Verizon state.³⁷⁶

96. AT&T further argues that “[t]he flaw in the transport module of the Synthesis Model – tendency to overstate transport costs, and to overstate them more in states with lower population density – exaggerates relative costs in lower density states, and understates their cost-adjusted rates even for CLECs that never buy switching separately from the other nonloop elements.” We are not convinced that considering switching in combination with transport “allows Verizon to inflate the cost of competitive entry in states with lower population densities even for CLECs that never buy any unbundled switching separately from other non-loop elements.”³⁷⁷ Verizon reports and AT&T does not dispute that transport and switching UNEs are not purchased separately in the Verizon states.” Accordingly, for us to implement a UNE-by-UNE benchmark test for these elements would “promote form over substance, which, given the necessarily imprecise nature of setting TELRIC-based pricing, is wholly **unnecessary**.”³⁷⁹ Our benchmark analysis allows us to conduct a competitively meaningful analysis based on the way UNEs are actually purchased and we find that this approach is reasonable under the **circumstances**.³⁸⁰

B. Checklist Item 12 – Dialing Parity

97. Section 271(c)(2)(B)(xii) requires a BOC to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).”³⁸¹ Based on the evidence in the record, we find, as did the state **commissions**,³⁸² that Verizon provides local

³⁷⁴ *Verizon New Hampshire/Delaware Order*, 17 FCC Rcd at 18693-94, para. 54; Veriwn Reply at 16.

³⁷⁵ *UNE Remand Order*, 15 FCC Rcd at 3863, para. 371.

³⁷⁶ *Verizon New Hampshire/Delaware Order*, 17 FCC Rcd at 18693-94, para. 54; Veriwn Reply at 16.

³⁷⁷ AT&T Lieberman Decl., para. 21.

³⁷⁸ *Verizon Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl.*, para. 32 (reporting that, as of January 21, 2003, no competitive LEC had purchased unbundled switching separately in any of the Veriwn territories).

³⁷⁹ *Sprint v. FCC*, 274 F.3d at 561.

³⁸⁰ *Cf.* 47 U.S.C. § 154(j).

³⁸¹ 47 U.S.C. § 271(c)(2)(B)(xii). *See also* Appendix F, paras. 64-65.

³⁸² Maryland Commission Comments, Ex. A at 3; DC Commission Comments at 55; West Virginia Commission Comments at 94-97.

dialing parity in accordance with the Commission's **rules**.³⁸³ No commenter challenges Verizon's provision of dialing parity in Maryland or in Washington, D.C.

98. We disagree with FiberNet's claims that Verizon fails to satisfy the checklist regarding local dialing parity in certain geographic locations in West Virginia, where an extended area service (EAS) crosses LATA and state boundaries into Ohio, Pennsylvania, Kentucky, Maryland, or Virginia.)“ The multiple EAS locations encompass both Verizon and non-Verizon LEC wire centers in West Virginia and non-Verizon wire centers across state and LATA boundaries. FiberNet asserts that Verizon does not provide dialing parity in situations where FiberNet provides its own local switching by failing to transit FiberNet's customer's calls to non-Verizon customers in those portions of the EAS that cross LATA and state **boundaries**.³⁸⁵

99. In response, Verizon contends that network call routing arrangements to EAS customers not served by Verizon are the responsibility of a competitive LEC that provides its own switching, and that it is accordingly FiberNet's responsibility to seek the appropriate dialing parity arrangements with the non-West Virginia LECs within the EAS.³⁸⁶ Verizon provides local dialing parity with its customers by allowing them to reach all parts of the EAS through seven-digit dialing. Verizon will transit local calls from FiberNet's switch to Verizon customers in West Virginia and to independent LECs' customers in West Virginia within the EAS. However, Verizon will not transit local calls from FiberNet's switch to wire centers within the EAS that are outside of West Virginia.”

³⁸³ Verizon LacoutureiRuesterholz Maryland Decl., paras. **332-36**; Verizon Lacouture/Ruesterholz D.C. Decl., paras. **320-24**; Verizon LacoutureiRuesterholz West Virginia Decl., paras. **317-21** (showing that Verizon uses the same procedures and processes in the application states as it does in the states where Verizon has obtained approval under section **271**).

³⁸⁴ FiberNet Comments at 56-60; FiberNet Reply at **28-34**. No party is alleging that dialing parity is not being provided for resale or UNE-platform lines where Verizon provides local switching as an unbundled network element.

³⁸⁵ FiberNet Comments at **56-57, 60**; FiberNet Reply at **29**. FiberNet details the extended area service network involved and expense incurred. FiberNet Jan. **23 Ex Parte** Letter Attach. **4** and **5**. FiberNet also states that it has restored dialing parity in certain areas by purchasing interstate special access DSI facilities from Verizon but that such expensive, time consuming and cumbersome “work around” solutions are not consistent with the checklist. FiberNet states further that such “work arounds” are scheduled in the near future. FiberNet Comments at **58**; FiberNet Reply at **30**.

³⁸⁶ Verizon LacoutureiRuesterholz West Virginia Decl., para. **324**. Verizon declares that it satisfies checklist item **12** by “providing nondiscriminatory access to such service or information **as** are necessary to allow the requesting carrier to implement local dialing parity. It is not Verizon's responsibility to design, build or operate the dialing capability in a CLECs' networks in order to provide dialing parity.” Id., para. **323**.

³⁸⁷ Letter from Ann D. Berkowitz, Project Manager • Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-384** at **1** (filed Feb. **6, 2003**) (Verizon Feb. **6 Ex Parte** Letter on EAS).

100. We do not believe that the facts alleged by FiberNet warrant a finding of checklist **noncompliance**.³⁸⁸ Rather, we conclude that Verizon complies with our dialing parity rules by allowing the customers of all LECs to dial the same number of digits to complete local calls directed to Verizon West Virginia customers. Verizon is not required to develop interconnection arrangements for facilities-based competitive LECs with third-party carriers pursuant to our rules implementing section 251(b)(3). The Commission's local dialing parity rules are silent about the obligation of a LEC to provide dialing parity for a local call that is directed to a third-party carrier.³⁹⁰ The West Virginia Commission considered this issue and rejected FiberNet's claims, finding that FiberNet has the responsibility of providing dialing parity to its customers where it provides local switching.³⁹⁰ Moreover, the record shows that Verizon provides the very same arrangement to FiberNet as to StratusWave, another competitive LEC with network arrangements that confront this issue.³⁹¹

101. We agree with the West Virginia Commission that it is the competitive LEC's responsibility to implement local dialing parity on its own switch and make arrangements for interconnection with other carriers.³⁹² indeed, this issue appears to be more appropriately characterized as an allegation by FiberNet that Verizon has breached an obligation to provide local transiting rather than one of dialing parity.³⁹³ There is nothing in our rules implementing section 251(b)(3), however, that requires a LEC to provide transiting. Accordingly, this dispute is beyond the scope of the instant section 271 application.

C. Checklist Item 1 – Interconnection

102. Section 271(c)(2)(B)(i) requires the BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements of sections 251 and 252.³⁹⁴ Based on our review of the record,

³⁸⁸ The Department of Justice believes that this disparity in competitive LECs' ability to duplicate Verizon's EAS may have significant competitive effects, but defers to the Commission's interpretation of the applicable requirements and whether those requirements are satisfied by Verizon. See Department of Justice Evaluation at 3, n.4.

³⁸⁹ See 47 C.F.R. § 51.207; see also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order, 11 FCC Rcd at 19392, 19428-29, paras. 67-68 (1996) (*Local Competition Second Report and Order*).

³⁹⁰ West Virginia Commission Comments at 97

³⁹¹ *Id.*

³⁹² *Id.* The West Virginia Commission concluded that Verizon was not required to do the "heavy lifting" for competitive LECs in negotiating interconnection agreements with other carriers on the other side of LATA boundaries.

³⁹³ Transiting obligations are currently under consideration in the *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (rel. Apr. 27, 2001) (*Intercarrier Compensation NPRM*).

³⁹⁴ 47 U.S.C. § 271(c)(2)(B)(i).

we conclude, as did the state **commissions**,³⁹⁵ that Verizon is in compliance with the requirements of this checklist item in the application states.³⁹⁶ In reaching this conclusion, we examine, as in prior section **271** orders, Verizon's performance in providing interconnection trunks and collocation to competing carriers.'" We note that no commenter disputes Verizon's interconnection quality or timeliness in either Washington, D.C. or West Virginia and that only one commenter disputes interconnection quality timeliness in **Maryland**.³⁹⁸

1. Specific Interconnection Issues

103. GRIPs. We also find that Verizon provides interconnection in the application states at any technically feasible point, including a single point of interconnection within the LATA," as we have required in previous section **271** proceedings.⁴⁰⁰ The record does not support the contention by some parties that Verizon's geographically relevant interconnection point (GRIPs) policy frustrates the Commission's rule requiring incumbent LECs to offer competing carriers the ability to interconnect at a single point per LATA.'" The record shows that Verizon's current model interconnection agreements in the application states do not contain the GRIPs language requiring competitive LECs to collocate in each Verizon central office.⁴⁰² Parties concede that the single point of interconnection language is not in the model

³⁹⁵ Maryland Commission Comments, **Ex. A** at 3, 6-7; DC Commission Comments at **24, 92**; West Virginia Commission Comments at **19**.

³⁹⁶ Verizon achieved the established performance metrics standards, or had no activity, for new physical and virtual collocation timeliness, **NP-2-05-6701** and **NP-2-05-6702** and for augments, **NP-2-05-6702** and **NP-2-05-6702**. Veriwn Lacouture/Ruesterholz Maryland Decl., para. **48**; Verizon Lacouture/Ruesterholz Washington, D.C. Decl., para. **45**; Verizon Lacouture/Ruesterholz West Virginia Decl., para. **46**.

³⁹⁷ See *generally* Appendices B, C, D, and E.

³⁹⁸ See Core Comments at 6, n.17.

³⁹⁹ See Veriwn Lacouture/Ruesterholz Maryland Decl., para. **34**; Verizon Lacouture/Ruesterholz D.C. Decl., para. **34**; Verizon Lacouture/Ruesterholz West Virginia Decl., para. **34**.

⁴⁰⁰ See *SWBT Texas Order*, 15 FCC Red at **18390**, para. **78**; *Verizon Massachusetts Order*, 16 FCC Red at **9092**, para. **182**.

⁴⁰¹ AT&T Comments at **6-12**; FiberNet Comments at **6-11**; Starpower/US LEC Comments at **4-16**; AT&T Reply at **4-6**.

⁴⁰² Veriwn Application App. P – Maryland, Tab 1 (Maryland Model Interconnection Agreement); Verizon Application App. I – Washington D.C., Tab 1 (Washington D.C. Model Interconnection Agreement); Verizon Application App. I – West Virginia, Tab 1 (West Virginia Model Interconnection Agreement); Veriwn Lacouture/Ruesterholz Maryland Decl., para. **33**; Verizon Lacouture/Ruesterholz Washington, D.C. Virginia Decl., para. **33**; Verizon Lacouture/Ruesterholz West Virginia Decl., para. **33**. Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-384** at **1** (filed Feb. **5, 2003**) (Verizon Feb. **5 Ex Parte** Letter on interconnection agreements). Verizon contends AT&T was confused about the Maryland Commission record and did not fully realize that the model interconnection agreements had been modified before the present application was filed. *Id.* at 2.

interconnection agreements. Parties contend, however, Verizon initially defines the interconnection point (IP), that determines financial responsibility for inter-network calls, as a Verizon switch even if the physical point of interconnection (POI) is different, such as a mid-span meet point.⁴⁰³ These allegations do not, however, warrant a finding of checklist noncompliance. Verizon demonstrates that it has entered into at least one interconnection agreement in each of the three application states that allows a competing carrier to interconnect at a single point of interconnection in the LATA, as required under our rules, which neither follows the GRIPs policy nor defines the IP at a different point from the POI.”

104. Dedicated Transport. Additionally, we disagree with Starpower and US LEC’s argument that Verizon violates checklist item 1 by not providing dedicated transport as UNEs.⁴⁰⁵ Starpower and US LEC argue that Verizon requires competitive LECs to either purchase dedicated transport through interstate special access tariffs or collocate in every Verizon central office in order to obtain dedicated transport as a UNE.⁴⁰⁶ This assertion appears to be based on an older model interconnection agreement. The record shows that Verizon currently has model interconnection agreements in the application states that no longer have these requirements.⁴⁰⁷

⁴⁰³ Starpower and US LEC allege that interconnection agreements, offered by Veriwn to demonstrate that GRIPs are not included, have essential language that preserves the essence of the GRIPs policy. StarpowerRIS LEC Comments at 8-13. AT&T maintains that Veriwn’s GRIPs policies unfairly shift Verizon’s network cost responsibilities to competing carriers by requiring the competitive LEC, in mid-span meet point interconnection, to pay for transporting calls over Verimn’s network to and from the Verizon switch to the physical point of interconnection in violation of the “equal in quality” requirement of section 251(c)(2) of the Act. AT&T Comments at 6; AT&T Reply at 4.

⁴⁰⁴ Verizon LacoutureRuesterholz Maryland Decl., para. 33 (citing to its interconnection agreement with Starpower); Verizon LacoutureRuesterholz Washington D.C. Decl., para. 33 (citing to its interconnection agreement with WorldCom and Starpower); Verizon LacoutureRuesterholz West Virginia Decl., para. 33 (citing to its interconnection agreement with AT&T, FiberNet and WorldCom); Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Feb. 21, 2003) (Verizon Feb. 21 *Ex Parte* Letter on interconnection agreements). In the *Virginia Arbitration Order*, the Bureau concluded that the interconnection language proposed by competing carriers was more consistent than Verizon’s GRIPs language with the right of competitive LECs to interconnect at any technically feasible point. *Virginia Arbitration Order*, para. 53. FiberNet and StarpowerRIS LEC maintain that Veriwn’s recent behavior evidences an intention to disregard the directive of the *Virginia Arbitration Order* with respect to the single point of interconnection language to be included in the interconnection agreements that were the subject of the arbitration. FiberNet Comments at 8-9 and Starpower/US LEC Comments at 14-16. We find Starpower/US LEC’s evidence unpersuasive. As stated above, Verizon has demonstrated that it has entered into at least one interconnection agreement in all Maryland, Washington D.C., and West Virginia that allows a competing carrier to interconnect at a single physical point in a LATA. For the same reasons, we find that Veriwn complies with checklist item 13 reciprocal compensation obligations. See 47 U.S.C. § 271(c)(2)(B)(xiii). See FiberNet Comments at 7.

⁴⁰⁵ StarpowerRIS LEC Comments at 23-24.

⁴⁰⁶ *Id.*

⁴⁰⁷ Verizon Reply at 26-27.

105. Collocation Return Policies. We also disagree with AT&T's allegations that Verizon's collocation return policies **are** unjust and **unreasonable**.⁴⁰⁸ AT&T contends that Verizon has had about one-half of all collocation spaces returned to it in the three states, but has issued few collocation credits to competitive LECs in any of the **states**.⁴⁰⁹ Verizon states that it has issued credits for approximately 34 reused collocation spaces in the three states and will continue to do so when such space is **reused**.⁴¹⁰ The record indicates that Verizon issues credits when returned collocation space is **reused**.⁴¹¹ In addition, AT&T asserts that Verizon has an obligation to advertise and otherwise notify potential collocators of availability of accordingly lower priced returned collocation **space**.⁴¹² Verizon contends that it meets its obligation to identify all central offices where collocation is available, and asserts that potential collocators are informed of returned collocation space by the project managers assigned to their collocation requests.⁴¹³ We find that there is no Commission requirement that returned collocation space be advertised, and thus we find that not advertising such collocation space does not constitute a violation of checklist item 1.⁴¹⁴

106. Alleged Provisioning Delay and Multi Frequency (MF) Trunks. Additionally, we disagree with Core that Verizon's interconnection policies in Maryland violate checklist item 1.⁴¹⁵ Core first argues that Verizon forces competitive LECs to wait for Verizon to construct new dedicated interoffice entrance facilities although adequate common facilities already exist on existing fiber **rings**.⁴¹⁶ Core contends that being required to wait for dedicated entrance facilities

⁴⁰⁸ AT&T Comments at **12-16**; AT&T Reply at **9-12**.

⁴⁰⁹ AT&T Comments at **12-13**.

⁴¹⁰ Verizon LacoutureRuesterholz Reply, para. **153**.

⁴¹¹ *Id.*

⁴¹² AT&T Comments at **16**.

⁴¹³ Verizon Lacouture/Ruesterholz Maryland Decl., para. **51**; Verizon Lacouture/Ruesterholz Washington, D.C. Decl., para. **48**; Verizon Lacouture/Ruesterholz West Virginia Decl., para. **49**. The record shows that of central offices that have ever had competitive LEC collocation, **97%** in Maryland, **66%** in West Virginia, and 100% in Washington, D.C. currently have returned collocation space. Veriwn LacoutureRuesterholz Reply, para. **156**.

⁴¹⁴ Although we do not rely on it, the record shows that the West Virginia Commission required Verizon to advertise the availability of returned collocation space and Verizon has agreed to do **so**. Verizon Lacouture/Ruesterholz Reply, para. **156**. We also note that there are open proceedings before both the Maryland Commission and the DC Commission concerning these conditions of interconnection. Verizon Lacouture/Ruesterholz Maryland Decl., para. **77**; Letter from Ann D. Berkowitz, Project Manager • Federal Affairs, Veriwn, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-384** at **1-2** (filed Jan. **22,2003**) (Verizon Jan. **22** Ex *Parte* Letter).

⁴¹⁵ Core Comments at **2, 16**

⁴¹⁶ *Id.* at **2-3**. This issue is currently the subject of a pending complaint brought by Core against Verizon at the Maryland Commission, MDPSC Case No. **8881**. *Id.* at **4**. Additionally, Core has filed a complaint alleging interconnection delay on other grounds pending at the Commission, EB-01-MD-007. *Id.* We make no findings in this order with respect to the enforcement proceeding.

harms competitive LECs by delaying their entry into a market, causing them to lose customers and increasing their costs.⁴¹⁷ Core states that, although Verizon has recently begun to offer interconnection trunks over existing facilities,” Verizon’s recent provisioning of interconnection trunks over existing facilities is not adequate to show that Verizon meets checklist item 1.⁴¹⁹ The specific details of network configuration and interconnection of BOC’s and competitive LEC’s facilities are appropriate for interconnection negotiations between the interconnecting parties and subject to the overall rules established to implement the 1996 Act. We find that this issue involves disputes over terms of the interconnection agreement between Core and Verizon, issues more appropriately considered as part of a complaint proceeding before the relevant state commission or this **Commission**.⁴²⁰

107. We also reject Core’s argument that by not providing the Automatic Number Information (ANI) over MF trunks for local calls Verizon is violating checklist item 1.⁴²¹ Core contends that Verizon’s refusal to pass ANI over MF trunks violates the equal-in-quality and nondiscriminatory standards of section 251(c)(2) because Verizon passes ANI information to: (1) competitive LECs that use signaling system 7 (SS7) to interconnect with Verizon, and (2) interexchange carriers (as well as competitive LECs that interconnect with Verizon for long distance as well as local traffic) using MF **signaling**.⁴²² There is no requirement in section 251(c)(2), or our implementing rules, that requires incumbent LECs, such as Verizon, to pass the ANI over MF **trunks**.⁴²³ Although Verizon does pass the ANI to interexchange carriers for long distance calls, it does not pass the ANI to any carriers for local calls. To the extent Core wishes

⁴¹⁷ **Id.** at 5-6.

⁴¹⁸ **Id.** at 7-8. The record shows that interconnection trunk provisioning over existing entrance facilities is available in Maryland under modified interconnection terms. Verizon Lacouture/Ruesterholz Reply, para. **142**. Verizon states that in about 10% of Verizon-provisioned interconnection arrangements use existing facilities, characterized by Verizon as “loop facilities,” for interconnection transportation trunks between a competitive LEC central office and a Verimn central office. **Id.**, para. **141**.

⁴¹⁹ Core Comments at 9-12.

⁴²⁰ Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-384**, Verimn Maryland Initial Brief, Maryland Commission Case No. **8881**, at 10-20 (filed Feb. **11, 2003**) (Verizon Feb. **11 Ex Parte** Letter on pending complaint). Moreover, although we do not rely on it, we note Verizon has indicated that it has available a new interconnection agreement amendment in Maryland providing interconnection over local fiber loops until dedicated entrance facilities can be built. Verimn Lacouture/Ruesterholz Reply, para. **142**.

⁴²¹ Core Comments at 16-18; *see also* Letter from Michael B. Hazzard, Counsel to Core, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-384** at 1-2 (filed Jan. **21, 2003**) (Core Jan. **21 Ex Parte** Letter). ANI enables carriers to provide features such as caller ID. Core also indicates, however, that either the ANI or the calling party number (CPN) information would provide it the desired information and that Core could utilize either ANI or CPN interchangeably. Core Comments at 16-17, n. **58** and Ex. C at **84**.

⁴²² Core Comments at 17.

⁴²³ We note our rules only require common carriers using **SS7** to transmit the CPN, which includes the ANI as well as other information, associated with an interstate call, not local calls. **47 C.F.R. § 64.1601**.

to have the ANI for local calls passed it may purchase SS7 trunks.⁴²⁴ Accordingly, we find that Verizon provides nondiscriminatory access to interconnection trunks consistent with the requirements of section 251(c)(2).

2. Pricing of Interconnection

108. Checklist item 1 requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."⁴²⁵ Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."⁴²⁶ Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and it allows the rates to include a reasonable profit.⁴²⁷ The Commission's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation at rates that are based on TELRIC.⁴²⁸ The D.C. Commission,⁴²⁹ Maryland Commission,⁴³⁰ and West Virginia Commission⁴³¹ found that Verizon currently provides collocation in compliance with checklist item 1.

109. Based on the evidence in the record, we find that Verizon offers interconnection in Maryland, Washington, D.C., and West Virginia to other telecommunications carriers at just, reasonable, and nondiscriminatory rates in compliance with checklist item 1. Under its state network interconnection services tariffs offering physical collocation, Verizon provides for pro rata refunds of non-recurring charges for space preparation where a collocater returns its collocation arrangement to Verizon and another carrier reuses that same collocation arrangement.⁴³² AT&T alleges that Verizon's refunds for returned collocation space have been

⁴²⁴ Verizon Lacouture/Ruesterholz Reply, para. 145.

⁴²⁵ 47 U.S.C. § 271(c)(2)(B)(i).

⁴²⁶ 47 U.S.C. § 251(c)(2).

⁴²⁷ 47 U.S.C. § 252(d)(1).

⁴²⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15816, para. 628 (concluding that the same pricing rules shall apply to both interconnection and unbundled network elements).

⁴²⁹ See D.C. Commission Comments at 19 (finding that generally Verizon has met the requirements that satisfy checklist item 1).

⁴³⁰ See Maryland Commission Comments, **Ex. A** at 3 (concluding that, subject to certain conditions, Verizon is technically in compliance with the checklist).

⁴³¹ See West Virginia Commission Comments at 20 (stating that Verizon satisfies the requirements of checklist item 1).

⁴³² Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-384 and 02-237 at 1-2 (filed Jan. 22, 2003) (Verizon Jan. 22 *Ex Parte* Letter on pricing issues). See *also* AT&T Comments at 13; AT&T Reply at 9.

inadequate because Verizon uses an improperly short amortization period to calculate the amount of the **credit**.⁴³³ According to AT&T, rather than using the 30-year period previously applied to depreciation of collocation space, Verizon uses a 12-year depreciation period to calculate credits.” AT&T argues that the resulting credits have been below the amounts called for by the applicable tariffs.⁴³⁵

110. Verizon states that it is calculating credits for returned collocation arrangements “in the manner prescribed by this **Commission**.”⁴³⁶ Verizon admits that it computes credits for reused collocation arrangements using a 12-year amortization period for collocation assets, but contends that such a practice is “consistent with the depreciation lives prescribed by the **FCC**.”⁴³⁷ Verizon further observes that increasing the amortization period, as AT&T suggests, would increase the cost that other competitive LECs incur when using returned collocation arrangements.”⁴

111. AT&T responds that whether Verizon could adopt a 12-year depreciation period in its tariffs is irrelevant because Verizon’s federal collocation tariff, as well as an OSS evaluation report by KPMG, indicate a 30-year depreciation life for collocation space.⁴³⁹ Moreover, AT&T argues that a 12-year economic life for unused collocation space is unreasonable because it is “far shorter than the true economic life of the **assets**.”⁴⁴⁰ AT&T also

⁴³³ AT&T Comments at 14. *See also* AT&T Reply at 11.

⁴³⁴ AT&T Comments at 14. AT&T explains that use of the shorter period substantially increases the cost to the competitive LEC of collocation space returned to Verizon. *Id.* *See also* AT&T Reply at 12.

⁴³⁵ AT&T Comments at 14-15. AT&T also argues that Verizon’s failure to calculate credits on the basis of a 30-year economic life violates the filed rate doctrine, and hence is illegal. AT&T Reply at 11. We note that AT&T has not alleged that Verizon’s use of a 12-year economic life is in violation of its existing interconnection agreements.

⁴³⁶ Verizon Reply at 30

⁴³⁷ *See* Veriwn Jan. 22 *Ex Parte* Letter on pricing issues at 2 (citing the prescribed depreciation lives for digital circuit equipment of 11-13 years). *See also* Verizon Reply at 30-31; Verizon Lacouture/Ruesterholz Reply Decl., para. 152.

⁴³⁸ Verizon Lacouture/Ruesterholz Reply Decl., para. 151

⁴³⁹ AT&T Reply at 10-11. Verizon submitted the KPMG report in its Virginia 271 application and relied on it in all three state proceedings relevant to this application. *Id.* at 10. *See* Verizon Application, App. C, Vol. 2, Tab 5, Virginia State Corporation Commission, Veriwn Virginia, Inc., OSS Evaluation Project, Final Report, Version 2.0, KPMG Consulting (dated Apr. 15, 2002).

⁴⁴⁰ AT&T Reply at 11 (arguing that the credits address collocation-related investments for activities such as construction, partitioning, and building preparation that have far longer economic lives than digital circuit equipment upon which Verizon relies to arrive at the 12-year figure). *See also* AT&T Feb. 11 *Ex Parte* Letter at 2-3 (discussing the Commission’s *Expanded Interconnection Order*). Under our *Expanded Interconnection Order*, the Commission established rules governing federal expanded interconnection through collocation. *See Local Exchange Carriers’ Rates, Terms, and Conditions For Expanded Interconnection Through Physical Collocation For Special Access and Switched Transport*, CC Docket No. 93-162, Second Report and Order, 12 FCC Rcd 18730 (1997) (*Expanded Interconnection Order*).

argues that “an unrealistically short economic life” constitutes a barrier to entry because a short life, “by decreasing the size of the potential refund available to [a] **CLEC** upon abandonment of collocation space, increases the share of the entry cost that becomes sunk immediately upon entry.”” Thus, the subsequent user of the space, which could be Verizon or its affiliate, reaps the benefits from the improperly accelerated **depreciation**.⁴⁴²

112. We begin by noting that no party, including AT&T, challenges Verizon’s non-recurring space preparation charge as checklist noncompliant. Rather, AT&T alleges that the first collocater faces a barrier to entry because the 12-year amortization period used by Verizon results in a decrease “in the size of the *potential* refund available to [a] **CLEC** upon abandonment of collocation space.”” We cannot agree. As a general matter, the first collocater to occupy a space is not guaranteed any refund amount if it should return the space. A refund to the first collocater based on the unamortized portion of the non-recurring charge will be provided only if it turns out that a subsequent collocater (whether another competitive **LEC** or Verizon) occupies that particular collocation arrangement. Moreover, the record suggests that the competitive impact of this issue likely is currently quite small given the substantial decline in demand for collocation arrangements (thus making it less likely that the collocation arrangement will be reused) and the lack of record evidence on the duration of the collocater’s occupation of the **space**.⁴⁴⁴ Under these circumstances, the smaller refund that would be due only in the event of reuse of a particular collocation arrangement under Verizon’s proposed depreciation schedule compared to the refund that would be due under AT&T’s proposed depreciation schedule does not rise to the level of checklist noncompliance.”

113. Although this issue does not rise to the level of checklist noncompliance, the record raises questions concerning Verizon’s calculation of credits for returned collocation

⁴⁴¹ AT&T Reply at 12

⁴⁴² *Id*

⁴⁴³ *See id.* (emphasis added)

⁴⁴⁴ *See* Verizon Reply at 30 n.28; Verizon Lacouture/Ruesterholz Reply Decl., para. 156. *See* also Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 2 (filed Mar. 12, 2003) (stating that as of December 2002, 94% of returned collocation space in the three jurisdictions at issue here remains vacant and unused by any competitive LEC (because there is little demand for collocation arrangements) and that Verizon rarely reuses returned collocation space) (Verizon March 12 *Ex Parte* Letter).

⁴⁴⁵ In an *ex parte* submission, AT&T presents several illustrative examples demonstrating the dollar impact on the refund amount using Verizon’s 12-year amortization period and AT&T’s proposed 30-year amortization period. *See* Letter from David M. Levy, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 2-5 (filed Feb. 27, 2003) (providing examples of the impact for an individual collocation space and the aggregate impact of the issue). While the potential dollar impact may be significant under certain circumstances, the impact remains speculative because any refund amount is contingent on subsequent use of that collocation space. *See* Verizon March 12 *Ex Parte* Letter at 2 (noting that AT&T’s examples assume that all returned collocation arrangements qualify for credits when only those that are reused qualify for a refund).

space. We note in particular that the KPMG report on which Verizon relies in all three of these jurisdictions appears to state that the applicable amortization period is 30 years.⁴⁴⁶ We similarly note AT&T's assertion that Verizon's federal expanded interconnection tariff appears explicitly to provide for amortization of collocation cages over 30 years.⁴⁴⁷ Nevertheless, because Verizon's obligations arise solely from its state tariffs,⁴⁴⁸ we believe that this dispute is best resolved by the state commission in the first instance.⁴⁴⁹ We recognize that states may allow depreciation lives for equipment that differ from what we may allow.⁴⁵⁰ Moreover, in prior section 271 orders, we have stated that we are reluctant to deny a section 271 application because a BOC is engaged in an unresolved rate dispute with its competitors before a state commission.⁴⁵¹ Below, we discuss each jurisdiction in turn and conclude that AT&T has a remedy available in all three jurisdictions.⁴⁵² In Maryland, there is evidence in the record that the issue of the proper amortization period for credits is pending before the Maryland Commission in a formal proceeding.⁴⁵³ Because this specific issue is now pending before the Maryland Commission, we decline to preempt the orderly disposition of this matter in that forum.

⁴⁴⁶ See AT&T Comments at 15 n.15; AT&T Reply at 10-11. See also AT&T Feb. 11 Ex Parte Letter at 5. AT&T notes that the Virginia tariff language reviewed by KPMG in preparing its OSS report is identical to the tariff language in Verizon's Maryland, Washington, D.C., and West Virginia collocation tariffs. See Letter from David M. Levy, Counsel to AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 & n.1 (filed Mar. 13, 2003) (AT&T Mar. 13 Ex Parte Letter).

⁴⁴⁷ See AT&T Comments at 14 & n.13 (also claiming that, in the Maryland 271 proceeding, Verizon's own witness admitted that 30 years was the period called for under the federal tariff); AT&T Reply at 10. See also AT&T Feb. 11 Ex Parte Letter at 3-4. Further, AT&T maintains that the Expanded Interconnection Order requires Verizon to use the cage amortization life as the amortization life for both the construction and equipment. See AT&T Mar. 13 Ex Parte Letter at 2.

⁴⁴⁸ AT&T has not alleged that Verizon's use of a 12-year economic life is in violation of its existing interconnection agreements.

⁴⁴⁹ We note that a similar issue concerning the proper amortization period applicable to credits for collocation space under Verizon's federal tariffs is currently before this Commission in WC Docket No. 02-237. See *Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket 02-237 (filed Aug. 16, 2002). We emphasize that, in considering AT&T's arguments as we do above, we express no opinion on the merits of the substantive question presented in that separate proceeding.

⁴⁵⁰ See, e.g., *Louisiana PSC v. FCC*, 476 U.S. 355, 375 (1986) (stating that "it is certainly possible to apply different rates and methods of depreciation to [dual jurisdictional] plant once the correct allocation between interstate and intrastate use has been made").

⁴⁵¹ See, e.g., *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20754, para. 73.

⁴⁵² Because Verizon's state tariffs do not specify a depreciation period to be used in calculating credits, we question AT&T's contention that use of anything other than a 30-year period is *per se* a violation of the filed rate doctrine. See AT&T Reply at 11.

⁴⁵³ See Verizon Jan. 22 Ex Parte Letter on pricing issues at 2 (stating that that Maryland Commission is addressing the reuse of collocation space, including the appropriate amortization period for credits, in Case No. 8913). Currently, the parties to the state proceeding are engaged in settlements discussions and will proceed to (continued...)

114. In considering this issue, the D.C. Commission rejected AT&T's request to "extend" the amortization period from 12 to 30 years, stating that AT&T's request "incorrectly assume[d] that returned space must of necessity be cheaper for the next CLEC than its other alternatives."⁴⁵⁷ The D.C. Commission further stated that AT&T "failed to address the reason for extending the amortization period or to explain why that issue is not more properly a function of the collocation proceeding [the D.C. Commission] just completed in Formal Case No. 962."⁴⁵⁵ AT&T asserts that the D.C. Commission misunderstood AT&T's position, arguing that it did not ask to "extend" the amortization period.⁴⁵⁶ Rather, AT&T maintains that it asked the D.C. Commission to find that Verizon's current calculations were a breach of its existing obligations.⁴⁵⁷ AT&T further states that it did not raise the issue in the collocation proceeding (Formal Case No. 962) because, in AT&T's view, the amortization period was already established as 30 years and because the collocation proceeding concluded months before AT&T learned of Verizon's "switch" to a 12-year amortization period.⁴⁵⁸ Finally, AT&T argues that this Commission must adjudicate this issue because it goes to the issue of Verizon's compliance with checklist item 1.⁴⁵⁹

115. Based on the record, we find no clear error in the D.C. Commission's decision to reject AT&T's argument on procedural grounds. As AT&T admits, it failed to raise the amortization issue in the collocation proceeding to which the D.C. Commission refers even though Verizon's state collocation tariff included no specific amortization period.⁴⁶⁰ Moreover,

(Continued from previous page)

litigate the issue before the Maryland Commission if they are unable to reach resolution. *Id.* See also Verizon Reply at 31; Verizon Lacouture/Ruesterholz Reply Decl., para. 154.

⁴⁵⁴ D.C. Commission Comments at 21.

⁴⁵⁵ *Id.* at 21-22. In December 2002, the D.C. Commission released two orders approving Verizon's collocation tariff filing. *Id.* at 18. See also Verizon Application, App. C—District of Columbia, Vol. 12, Tab 80, Formal Case No. 962, *In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order, Order No. 12608 (rel. Dec. 3, 2002) and Verizon Application, App. C—District of Columbia, Vol. 12, Tab 84, Formal Case No. 962, *In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order, Order No. 12614 (rel. Dec. 12, 2002). Verizon's collocation tariff became effective on December 20, 2002. D.C. Commission Comments at 18.

⁴⁵⁶ See Letter from Amy L. Alvarez, District Manager, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Feb. 6, 2003) (AT&T Feb. 6 *Ex Parte* Letter).

⁴⁵⁷ *Id.* See also *id.* at 2 (arguing that the amortization period under Verizon's existing tariffs is 30 years, not 12).

⁴⁵⁸ *Id.* at 2. AT&T notes that Verizon was "not forthcoming on its decision to utilize a 12-year amortization period" and that the refund amounts were presented as a lump sum without any supporting calculations disclosing the 12-year amortization period. *Id.* at 2 n.5 AT&T states that it learned of the 12-year period only because it could not reconcile the refunds received from Verizon and confronted Verizon about the discrepancy. *Id.*

⁴⁵⁹ *Id.* at 2

⁴⁶⁰ See *id.*

in the Washington, D.C. section 271 proceeding, AT&T offered no support or argument for its request for a 30-year amortization **period**.⁴⁶¹ In its post-hearing brief, AT&T listed a number of steps that Verizon should be required to take to comply with checklist item 1. Among several other things listed, AT&T stated that Verizon “should use a 30 year amortization period, to calculate the credits due to a vacating CLEC as well as the ‘discounted’ price to a subsequent CLEC.”⁴⁶² We agree with the D.C. Commission that AT&T provided no rationale or support for its position. Because AT&T failed to raise this issue in the collocation proceeding and because AT&T failed to explain to the D.C. Commission why a 30-year amortization period should be applied, we find no clear error in the D.C. Commission’s decision.

116. We acknowledge AT&T’s claim that it only recently discovered Verizon’s use of the 12-year amortization period during refund negotiations.⁴⁶³ AT&T remains free to raise this issue with the D.C. Commission in an appropriate proceeding in which the D.C. Commission will be able to compile a more complete record on this issue than we can do within the constraints of a 90-day review period. We believe it would be premature at this time for this Commission to preempt a potential state proceeding addressing this **issue**.⁴⁶⁴

117. The West Virginia Commission has not addressed the issue of the proper amortization period for calculating credits for returned collocation space, although AT&T raised the issue in passing in the state section 271 proceeding. In its Recommended Findings of Fact and Conclusions of Law, AT&T asked the West Virginia Commission to require Verizon to use a 30-year amortization period to calculate these **credits**.⁴⁶⁵ As was the case in Washington, D.C., however, AT&T failed to provide any reason or support for a 30-year amortization **period**.⁴⁶⁶ Indeed, the only discussion of the amortization issue is a statement in a footnote that the amortization period is “critical to the calculation of the credit for a CLEC returning collocation **space**.”⁴⁶⁷ The West Virginia Commission did not explicitly address the issue in its Commission

⁴⁶¹ D.C. Commission Comments at **21-22**. See also Letter from Amy L. Alvarez, District Manager, Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-384** at Attachment 1 (filed Jan. **31,2003**) (AT&T Jan. **31** Ex *Parte* Letter).

⁴⁶² AT&T Jan. **31** Ex *Parte* Letter, Attach. 1 at 15. See also *id* at **12** (requesting the same condition)

⁴⁶³ AT&T Reply at **9 n.6**.

⁴⁶⁴ See Verizon Lacouture/Ruesterholz Reply Decl., para. **154**.

⁴⁶⁵ See Verizon Application, App. B – West Virginia, Vol. 9, Tab **30**, *Verizon West Virginia, Inc. -- Petition in the Matter of Verizon West Virginia, Inc.’s Compliance with Conditions Set Forth in 47 U.S.C. § 271(c)*, Case No. 02-0809-T-P, AT&T Communications of West Virginia, Inc. Recommended Findings of Fact and Conclusions of Law at **26** (filed Nov. **26,2002**).

⁴⁶⁶ *Id*

⁴⁶⁷ *Id.* at **24 n.53**. The **only** other support provided by AT&T, in that same footnote, is a statement that “[t]he greater the amortization period, the lower the credit for returned space to the vacating CLEC.” *Id* We further note that this statement appears to be incorrect: a greater amortization period would result in a higher credit for the returned space.

Order and Consultative Report on Verizon's compliance with section 271 of the Act.⁴⁶⁸ Because AT&T raised this issue only briefly in the state 271 proceeding, we believe that the West Virginia Commission has not been given a meaningful opportunity to consider this issue.⁴⁶⁹ As is the case in Washington, D.C., AT&T is free to raise this issue before the West Virginia Commission and we believe that it would be premature at this time for this Commission to address an issue more appropriately handled by the state in the first instance.⁴⁷⁰

118. For these reasons, we find that Verizon offers interconnection in Maryland, Washington, D.C., and West Virginia to other telecommunications carriers at just, reasonable, and nondiscriminatory rates in compliance with checklist item 1.

V. OTHER ITEMS IN DISPUTE

A. Checklist Item 4 – Unbundled Local Loops

119. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”⁴⁷¹ Based on the evidence in the record, we find, as did the state commissions,⁴⁷² that Verizon provides unbundled local loops in accordance with the requirements of section 271 and our rules. Our conclusion is based on our review of Verizon’s performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, digital loops, high capacity loops, as well as our review of Verizon’s processes for line sharing and line splitting. Evidence in the record shows that competitors in Maryland have acquired from Verizon and placed into use approximately 133,000 unbundled loops, including about 92,000 stand-alone loops (including DSL loops), and about 41,000 loops provided as part of network element platforms that also include switching

⁴⁶⁸ West Virginia Commission Comments at **18-20** (discussing other issues concerning returned collocation space).

⁴⁶⁹ Indeed, regulatory agencies are not required to address arguments not stated with sufficient force or clarity. *See e.g., WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (the Commission need not sift through pleadings and documents to identify arguments not stated with clarity), *cert. denied*, 409 U.S. 1027 (1972); *Northside Sanitary Landfill v. Thomas*, 849 F.2d 1515, 1519 (D.C. Cir. 1988) (the petitioner has the burden of clarifying its position before the agency), *cert. denied*, 489 U.S. 10978 (1989). *See also MCI WorldCom v. FCC*, 209 F.3d 760, 765 (D.C. Cir. 2000) (finding that a party did not raise an argument with sufficient force to obligate the Commission to respond).

⁴⁷⁰ *See* Verizon Lacouture/Ruesterholz Reply Decl., para. **154**.

⁴⁷¹ **47 U.S.C. § 271(c)(2)(B)(iv)**. The Commission has defined the loop as “a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises. *Local Competition First Report and Order*, 11 FCC Rcd at **15691**, para. 380.

⁴⁷² Maryland Commission Comments, Ex. **A** at 3; D.C. Commission Comments at **29-41**; West Virginia Commission Comments at **64-78**.

and transport elements.”⁴⁷³ In Washington D.C., competitors have about 23,000 loops, including approximately 18,000 stand-alone loops (including DSL loops), and about **5,400** loops provided as part of network element platforms that include switching and transport elements.”⁴⁷⁴ West Virginia competitors have about 24,000 loops, including approximately 22,000 stand alone loops (including DSL loops), and about 1,800 loops provided as part of network element platforms that include switching and transport elements.⁴⁷⁵

120. Consistent with prior section 271 orders, we do not address every aspect of Verizon’s loop performance where our review of the record satisfies us that Verizon’s performance is in compliance with the relevant performance standards established by the state **commissions**.⁴⁷⁶ Instead, we focus our discussion on those areas where the record indicates discrepancies in performance between Verizon and its competitors. In making our assessment, we note that parties have not commented about any aspect of Verizon’s loop performance, and our review of the record shows that Verizon’s performance has been nondiscriminatory. Accordingly, we do not engage in a detailed discussion of Verizon’s loop performance except where discrepancies may exist.⁴⁷⁷ Instead, we focus on the issues raised by commenters. We note that in some instances, volumes with respect to specific performance measures may be too low to provide a meaningful result with regard to a particular performance metric. In such cases, because Verizon uses the same systems and procedures in the application states as it does in Virginia, we look to Verizon’s performance in Virginia to assist our analysis.⁴⁷⁸

121. *xDSL Loops, Digital Loops, Voice Grade Loops, and Hot Cuts.* Based on the evidence in the record, we find, as did the state **commissions**,⁴⁷⁹ that Verizon demonstrates that it

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See Verizon Lacouture/Ruesterholz Maryland Decl., para. 86. As of September 2002, Verizon had in service approximately 75,000 stand-alone competitive LEC POTS loops, 1,700 high capacity DSI loops, 13,000 DSL loops, 2,600 line sharing arrangements, and 2,700 2-wire digital loops. *Id.* at paras. 88, 109, 128, 157; Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Jan. 23, 2003) (Verimn Jan. 23 *Ex Parte* Letter on 2-wire digital loops).

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See Verizon Lacouture/Ruesterholz D.C. Decl., para. 81. As of September 2002, Verizon had in service approximately 12,000 stand-alone competitive LEC POTS loops, 300 high capacity DSI loops, 5,000 DSL loops, 770 line sharing arrangements, and 350 2-wire digital loops. *Id.* at paras. 83, 104, 124, 150; Verizon Jan. 23 *Ex Parte* Letter on 2-wire digital loops at 1.

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See Verizon Lacouture/Ruesterholz West Virginia Decl., para. 82. As of September 2002, Verizon had in service approximately 20,000 stand-alone competitive LEC POTS loops, 400 high capacity DSI loops, 430 DSL loops, 40 line sharing arrangements, and 1,500 2-wire digital loops. *Id.* at paras. 84, 103, 123, 148; Verizon Jan. 23 *Ex Parte* Letter on 2-wire digital loops at 1.

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See, e.g., *Verizon Connecticut Order*, 16 FCC Rcd at 14151-52, para. 9.

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See generally Appendices B, C, D, and E.

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See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6254, para. 36; Verizon Application at 2.

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Maryland Commission Comments, Ex. A at 3; D.C. Commission Comments at 29-41; West Virginia Commission Comments at 64-78.

provides xDSL-capable loops, digital loops, voice grade loops, and hot cuts in accordance with the requirements of checklist item **4** in the application **states**.⁴⁸⁰

122. High-Capacity Loops. Based on the evidence in the record, we find that Verizon demonstrates that it provides nondiscriminatory ordering, provisioning, and maintenance services for high-capacity unbundled local loops.⁴⁸¹ Several commenters allege that Verizon improperly rejects competitive LEC orders for high-capacity loops (*e.g.*, DSI and DS3 loops) under its “no build/no facilities” policy whenever any necessary facilities are not available and “new construction” is required.” Commenters, however, fail to provide new supporting evidence about this issue beyond that submitted in previous Verizon section 271 proceedings.

⁴⁸⁰ See generally Appendices B, C, D, and E. We reject OPC-DC’s comments that Verizon is discriminating in its provisioning of its “no dispatch” services. OPC-DC Comments at 17. OPC-DC’s assertion is based upon February to April 2002 performance data. *Id.* However, Verizon’s performance during the relevant months for this application (August – December 2002) indicates that it has achieved parity. *But* see PR-5-01-3341 (Percent Missed Appointment – Verizon Facilities) showing that from August to December, competing LECs reported a higher percentage of missed appointments (5.56%, 3.39%, 6.85%, 10.0%, and 3.85%) than Verizon retail customers (1.6%, 1.25%, 0.68%, 1.1%, and 1.47%); PR-6-01-3200 (Percent Installation Troubles Reported Within 30 Days) showing that from August to December, competitors reported a higher percentage of installation troubles (4.59%, 1.72%, 4.58%, 5.65%, and 4.37%) than Verizon retail customers (1.41%, 0.54%, 2.5%, 1.58%, and 2.28%). We do not find that Verizon’s performance under PR-5-01-3341 to be competitively significant given that this metric measures only the subset of orders that require work at Verizon facilities, that standard technical tests typically utilized while provisioning 2-wire loops do not work for such loops provided over fiber, and that Verizon’s overall performance for provisioning 2-wire digital loops meets the applicable performance standards. See LacoutureRuesterholz Reply Decl., para. **85**; Appendices B, C, D, and E. With regard to its performance for PR-6-01-3200, Verizon explains that the retail comparison group for this metric is not appropriate because over 90% of the orders in the retail comparison group are for DSO services and feature changes, which are simpler to perform, while 100% of the wholesale performance group is comprised of DSI and DS3 loops, which are significantly more difficult to provision. Therefore, it is more likely for the wholesale group to experience installation troubles than the retail comparison group. See Verizon LacoutureiRuesterholz Reply Decl., para. 33 & Attach. 2.

⁴⁸¹ See Verizon LacoutureRuesterholz Maryland Decl., paras. 110-117; Verizon LacoutureiRuesterholz D.C. Decl., paras. 105-113; Verizon LacoutureiRuesterholz West Virginia Decl., paras. 104-110; Verizon Reply at 31; LacoutureiRuesterholz Reply Decl., paras. **29-31, 36-44**; see *also* Appendices B, C, D, and E. Verizon has provisioned approximately 1,700 high capacity DSI loops and a limited number of DS3 loops in Maryland as of September 2002. See Verizon LacoutureRuesterholz Maryland Decl., para. 109. Verizon has provisioned about 300 DSI loops and no DS3 loops in Washington, D.C., and about 400 DSI loops and no DS3 loops in West Virginia, as of September 2002. See Verizon LacoutureRuesterholz D.C. Decl., para. 104; Verizon LacoutureRuesterholz West Virginia Decl., para. 103.

⁴⁸² See AT&T Comments at 19-27; FiberNet Comments at 11-16; OPC-DC Comments at 14-17; AT&T Reply at 13-17; FiberNet Reply at 5-7; Letter from David Levy, Counsel for AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Jan. 17, 2003) (AT&T Jan. 17 Ex Parte Letter). In addition, AT&T and FiberNet allege, respectively, that Verizon’s “no build/no facilities” policy also extends to voice grade (DSO) loops and EELs. FiberNet Comments at 16-17; FiberNet Reply at 13; AT&T Jan. 17 Ex Parte Letter at 1. AT&T also argues that Verizon’s categorization of what constitutes “new construction,” *e.g.*, the splicing of cable pairs, should be accounted for as an “operations expense,” as provided in section 32.5999(b)(3) of our rules. AT&T Comments at 23; AT&T Reply at 16. Although we agree that from an accounting prospective, the splicing of a copper loop is an operations expense and not new facilities construction, this fact is not dispositive of checklist compliance.

Moreover, Verizon's "no build/no facilities" policy effective in the application states is the same as that approved in other section 271 orders." We consider the issues that AT&T and others raise with respect to Verizon's loop provisioning practices to be serious and, as we noted in ruling on Verizon's most recent prior section 271 application, these issues are currently under review in our *Triennial Review* proceeding?" Indeed, the Commission took action in that proceeding on February 20, 2003, and the order, which addresses this issue, will be released in the near future.⁴⁸⁵ Should these commenters continue to find fault with Verizon's loop provisioning in the wake of the *Triennial Review* decision, they may assert their arguments in a section 271(d)(6) complaint proceeding, where there is an opportunity to build a more complete record than that provided in the current proceeding.⁴⁸⁶ Thus, we conclude, as we have in our prior section 271 orders, that commenters have not rebutted Verizon's showing that it provides high-capacity unbundled loops in a nondiscriminatory manner.⁴⁸⁷

123. **Dark Fiber.** Based on the evidence in the record, we find, as did the state commissions,⁴⁸⁸ that Verizon provides dark fiber in the three application states in a manner consistent with checklist item 4.⁴⁸⁹ Specifically, Verizon has demonstrated that it offers dark

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See *Verizon Virginia Order*, 17 FCC Rcd at 21958-61, paras. 140-145; *Verizon New Hampshire/Delaware Order*, 17 FCC Rcd at 18724-26, paras. 112-14; *Verizon New Jersey Order*, 17 FCC Rcd at 12349-50, para. 151; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17469-70, paras. 91-92.

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See *Verizon Virginia Order*, 17 FCC Rcd at 21959, para. 141 & n.492.

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A press release issued by the Commission at the time it voted on the item states that incumbent LECs "are required to make routine network modifications to UNEs used by requesting carriers where the requested facility has been constructed" and that incumbent LECs are required "to condition loops for the provision of xDSL services." See *Triennial Review News Release*, Attach. at 3.

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See *id.* at 9 (noting availability of section 271(d)(6) complaint to ensure that rates stay current).

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We note that the Maryland Commission conditioned its approval of Veriwn's application upon Verizon making changes to its "no build/no facilities" policy. See Maryland Commission Comments, Ex. A at 3. Specifically, the Maryland Commission ordered Verizon to implement a temporary measure whereby it will automatically convert any high-capacity UNE loop order to a special access order if Verizon denies the initial order because facilities were not immediately available. *Id.* at 4. In addition, once Veriwn builds the special access facility, it must automatically convert it to a UNE after the tariffed time period has elapsed. *Id.* Veriwn states that it is implementing both of these temporary measures in Maryland. See Verizon Lacouture/Ruesterholz Maryland Decl., para. 122. In Washington, D.C. and West Virginia, however, Veriwn is only implementing the process to automatically convert high-capacity UNE loop orders to special access circuits. See Veriwn Lacouture/Ruesterholz D.C. Decl., para. 118; Verizon Lacouture/Ruesterholz West Virginia Decl., para. 117. Verizon explains that once the special access circuit is built, the competitive LEC can submit a request to convert the circuit to a UNE facility. *Id.*

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Maryland Commission Comments, Ex. A at 3; D.C. Commission Comments at 45; West Virginia Commission Comments at 73.

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Verizon's policy is the same as its offering in Virginia which the Commission found to be section 271-compliant. See *Verizon Virginia Order*, 17 FCC Rcd 21961, para. 145 n.503 (citing *UNE Remand Order*, 15 FCC Rcd at 3776, para. 174). Verizon states that under its Maryland/D.C./West Virginia dark fiber offering, an unbundled dark fiber network element consists of two spare continuous fiber stands (*i.e.*, one pair) that are within an (continued.. ..)

fiber in the applications states in compliance with the checklist pursuant to a variety of interconnection agreements.⁴⁹⁰

124. We reject commenters' assertions that Verizon's dark fiber policies violate checklist item 4 in regard to provisioning, location information, and collocation requirements. First, there is nothing in our rules that requires Verizon to provision UNEs, including dark fiber, across LATA boundaries.⁴⁹¹ Accordingly, we do not find that Verizon's refusal to provide interLATA dark fiber warrants a finding of checklist noncompliance.

125. Second, we disagree with the three commenters that contend that Verizon fails to provide useful information regarding the location of dark fiber to competitive LECs, thus failing checklist item 2.⁴⁹² These commenters claim that Verizon does not make available to competitive LECs the tools competitive LECs need to construct a network overview of available fiber.⁴⁹³ Commenters contend that Verizon's alleged failure regarding dark fiber location information is discriminatory because Verizon's retail operations have access to the necessary information.⁴⁹⁴ However, the record demonstrates that Verizon's provision of information allows competitors to construct dark fiber networks in a nondiscriminatory fashion. The fiber inquiry process that competitive LECs use is the same process that Verizon uses to determine whether fiber is available on a given route.⁴⁹⁵ Moreover, the record demonstrates that Verizon makes available in all three jurisdictions the same three forms of dark fiber information⁴⁹⁶ that it makes

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existing fiber optic cable sheath. These fibers are terminated to an accessible terminal, but are not connected to any Verizon equipment used or that can be used to transmit and receive telecommunications traffic. See Verizon Lacouture/Ruesterholz D.C. Decl., para. 205; Verizon Lacouture/Ruesterholz Maryland Decl., para. 214; Verizon Lacouture/Ruesterholz West Virginia Decl., para. 200.

⁴⁹⁰ See Verizon Lacouture/Ruesterholz Maryland Decl., para. 214, Verizon Lacouture/Ruesterholz D.C. Decl., para. 205, Verizon Lacouture/Ruesterholz West Virginia Decl., para. 200.

⁴⁹¹ See Core Comments at 21

⁴⁹² See AT&T Comments at 30-31; Core Communications Comments at 19-20; FiberNet Comments at 23-26; AT&T Reply at 17-18, 20-22.

⁴⁹³ FiberNet Comments at 24

⁴⁹⁴ AT&T Reply at 21

⁴⁹⁵ Letter from Ann Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Feb. 19, 2003) (Verizon Feb. 19 Ex Parte Letter).

⁴⁹⁶ As in Virginia, Verizon allows competitive LECs to request serving wire center fiber layout maps showing the streets within the wire center where there are existing fiber cable sheaths. These maps include all fiber routes without identifying which routes have available dark fiber. Verizon will include termination points on the serving wire center maps it provides to competitive LECs in compliance with the requirements of the Maryland Commission. Verizon Reply at 34, n.31; Verizon Lacouture/Ruesterholz Reply Decl., para. 194; Letter from Ann Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 (filed Feb. 10, 2003) (Verizon Feb. 10 Ex Parte Letter). We agree with Verizon's assertion that the failure to include such information in Washington, D.C. and West Virginia does not impact Verizon's checklist compliance because the Maryland Commission's requirement goes beyond what this (continued. ...)

available in Virginia,” where the Commission found Verizon’s provision of dark fiber to satisfy the requirements of the Act.⁴⁹⁸ Verizon claims, and we agree here as we did in previous applications, that the three **types** of information that Verizon makes available allow competitive LECs to do long range planning, check the availability of dark fiber and perform detailed **engineering**.⁴⁹⁹ There **is** no evidence in the record to demonstrate that changes have occurred or that Verizon’s performance has deteriorated since we approved its processes in Virginia.

126. Finally, we reject Core’s allegation that Verizon has an **unfiled** interconnection agreement with Cavalier, regarding parallel provisioning of collocation space and dark **fiber**.⁵⁰⁰ Verizon explains that the agreement that Core described in its comments has been arranged through provisioning trials rather than through an interconnection agreement.” Verizon also explains that Core could have participated in similar trials. Accordingly, we find that Verizon has neither failed to disclose its agreement with Cavalier, nor failed to provide similar terms to other competing LECs.⁵⁰²

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Commission has required in previous section **271** proceedings. See Verizon Reply at **34 n.31**. Additionally, competitive LECs can inquire whether dark fiber is available on a particular route identified by the end points of the route. Verizon Lacouture/Ruesterholz Reply Decl., para. **195**. If the competitive LEC’s interconnection agreement includes provisions for routing dark fiber through intermediate offices, Verizon will look for alternative routes where **the** direct route does not have available dark fiber. *Id.* Finally, competitive LECs may request a Field Survey prior to submitting an ASR in order to verify the availability of dark fiber and to ascertain the dark fiber’s current transmission characteristics. Verizon Lacouture/Ruesterholz Reply Decl., para. **196**.

⁴⁹¹ Verizon Lacouture/Ruesterholz MD Decl., para. **214**; Verizon Lacouture/Ruesterholz DC Decl., para. **205**; Verizon Lacouture/Ruesterholz WV Decl., para. **200**. See also Verizon Reply at **33-34**.

⁴⁹⁸ *Verizon Virginia Order*, 17 FCC Rcd at 21960-61, para. 145.

⁴⁹⁹ Verizon Lacouture/Ruesterholz Reply Decl., para. **194**.

⁵⁰⁰ Core Comments at **21-23**.

⁵⁰¹ Letter from Ann Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-384** at **1** (filed Jan. **22,2003**) (Verizon Jan. **22 Ex Parte** Letter on Parallel Provisioning). In regard to its interconnection agreements with Cavalier, Verizon explains that until it expired on June **24,2002**, Verizon and Cavalier used to operate under an interconnection agreement in Maryland. Letter from Ann Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-384** at **1** (filed Jan. **29,2003**). On November **20,2002**, Cavalier requested that the Maryland Commission conduct an expedited arbitration for a new interconnection agreement with Verizon. *Id.* In Washington, D.C., Verizon operates under **an** interconnection agreement effective until September **30,2003**. *Id.* Cavalier and Verizon do not have an interconnection agreement in West Virginia. *Id.*

⁵⁰² Indeed, although we do not rely on it, Core has already signed an interconnection amendment with Verizon that was filed with the Maryland Commission on January **15,2003**, and which incorporates the parallel provisioning process developed in the Cavalier trial. Verizon Jan. **22 Ex Parte** Letter on parallel provisioning at 1; Verizon Reply, App. B, Tab **16**.

B. Checklist Item 7 – 911-E911 Access & Directory Assistance/Operator Svcs

127. Section 271(c)(2)(B)(vii)(I), (II), and (III) require a BOC to provide nondiscriminatory access to “911 and E911 services,” “directory assistance services to allow the other carrier’s customers to obtain telephone numbers” and “operator call completion services,” respectively.⁵⁰³ Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC “the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to ... operator services, directory assistance, and directory listing with no unreasonable dialing delays.”⁵⁰⁴ Based on the evidence in the record, we conclude, as did the state commissions,⁵⁰⁵ that Verizon offers nondiscriminatory access to its 911-E911 databases, operator services (OS), and directory assistance (DA).⁵⁰⁶ No commenter raises issues relating to access to Verizon’s 911-E911 databases or Verizon’s provision of OS in the application states. Further, no commenter raises issues related to Verizon’s provision of DA in Washington, D.C. or West Virginia.

128. We disagree with NALA/PCA’s claim that Verizon does not offer nondiscriminatory access to directory assistance to competitive LECs in Maryland because Verizon refuses to provide resellers with a monthly directory assistance call allowance that it provides to its own customers.⁵⁰⁷ As discussed below,⁵⁰⁸ the record shows that Verizon does not provide resellers in Maryland with a monthly allowance of free directory assistance calls because the Maryland Commission adopted a wholesale discount with a rate structure that is different from those in other Verizon states.” The issue of whether the Maryland Commission adopted

⁵⁰³ 47 U.S.C. § 271(c)(2)(B)(vii)(I), (II), and (III). See also *Bell Atlantic New York Order*, 15 FCC Rcd at 4131, para. 351.

⁵⁰⁴ 47 U.S.C. § 251(b)(3). We have previously held that a BOC must be in compliance with section 251(b)(3) in order to satisfy sections 271(c)(2)(B)(vii)(II) and (III). See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20740, para. 240 n.763. See also *Bell Atlantic New York Order*, 15 FCC Rcd at 4132-33, para. 352.

⁵⁰⁵ Maryland Commission Comments, Ex. A at 3; D.C. Commission Comments at 47; West Virginia Commission Comments at 81.

⁵⁰⁶ Verimn Lacouture/Ruesterholz Maryland Decl., paras. 254-88; Veriwn Lacouture/Ruesterholz D.C. Decl., paras. 243-77; Verimn Lacouture/Ruesterholz West Virginia Decl., paras. 239-73.

⁵⁰⁷ NALAPCA Comments at 6-10. NALAPCA also argues that Verizon’s directory assistance offering is discriminatory because retail customers are offered a bundled product that includes dial tone and directory assistance (including the monthly call allowance) while resellers purchase resold dial tone and directory assistance service separately. See Letter from Glenn S. Richards and Susan M. Hafeli, Attorneys for NALA/PCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 6-7 (filed Feb. 12, 2003) (NALAPCA Feb. 12 *Ex Parte* Letter). We find that Verizon’s separate offers of directory assistance and voice for resellers constitute nondiscriminatory access to directory assistance because competitive LECs can repackage the services as a bundled service for end-user customers.

⁵⁰⁸ See *infra* Section V.G.1 (Checklist Item 14–Resale).

⁵⁰⁹ Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 (filed Feb. 4, 2003) at 1 (Verizon Feb. 4 *Ex Parte* Letter on (continued..))

the appropriate discount for resale directory assistance is discussed under checklist item 14, below.

C. Checklist item **8** – WhitePages

129. Section 271(c)(2)(B)(viii) of the Act requires a BOC to provide “[w]hite page directory listings for customers of the other carrier’s telephone exchange service.”⁵¹⁰ The Commission has previously found that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provides nondiscriminatory appearance and integration of white page directory listings to competitive LECs’ customers; and (2) provides white page listings for competitors’ customers with the same accuracy and reliability that it provides its own customers.”

130. Based on the evidence in the record, we conclude, as did the state commissions,⁵¹² that Verizon satisfies checklist item 8.⁵¹³ We note that the Department of Justice remarked that commenters in the instant application argue that Verizon is asking competitive LECs to verify the accuracy of their directory listings in a new way and that Verizon has changed the directory listings review process that it relied on to obtain approval of its section 271 application in Virginia.” It appears, however, that Verizon has clarified on reply that it has not changed the process that competitive LECs can follow to verify the accuracy of their directory listings.⁵¹⁵ Additionally, commenters contend that Verizon’s methods of error detection are flawed and, as a result, Verizon unfairly shifts the burden for error detection to the competitive LECs.⁵¹⁶

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DA). The Commission has repeatedly left questions of rate structure to the state commission’s discretion. *See, e.g., Verizon New Jersey Order*, 17 FCC Rcd at 12307, para. 72; *Verizon Virginia Order*, 17 FCC Rcd at 21931-32, para. 92; *Verizon Maine Order*, 17 FCC Rcd at 11678, para. 29.

⁵¹⁰ 47 U.S.C. § 271(c)(2)(B)(viii).

⁵¹¹ *Second Bell South Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

⁵¹² Maryland Commission Comments, **Ex. A** at 8 (stating that the Commission will be carefully monitoring directory listing errors, and will if necessary, institute a special proceeding to address any concerns); D.C. Commission Comments at 48-51; West Virginia Commission Comments at 148-150 (stating that a work group shall be formed to review Veriwn’s directory listing process).

⁵¹³ See Verizon McLean/Webster Decl., paras. 89-123.

⁵¹⁴ See Department of Justice Evaluation at 9-10; AT&T Comments at 37-38.

⁵¹⁵ Verizon McLean/Webster Reply Decl., paras. 52-53.

⁵¹⁶ AT&T Comments at 35-40; FiberNet Comments at 46-55; AT&T Reply at 28-33; FiberNet Reply at 7-12. Additionally, as noted by the Department of Justice, commenters raise concerns identical to those raised by competitive LECs with respect to Veriwn’s application for section 271 authority in Virginia. *See* Department of Justice Evaluation at 9; FiberNet Comments at 54-55 (arguing that the KPMG test is not an accurate test of the directory listings and that the performance metric OR 6-04 does not provide a complete measurement of the directory listings process from start to finish and that more metrics are needed to measure performance on flow through systems). As in the *Verizon Virginia Order*, we find that Verimn complies with checklist item 8. *See Verizon Virginia Order*, 17 FCC Rcd at 21965-76, para. 152-71. Verizon made the same improvements in the (continued.. ..)

Commenters further contend that having to conduct their own error checking is inefficient and potentially very costly, because Verizon has reserved the right to charge competitive LECs for past use of the Directory Listing Inquiries (DLI) system.” For the reasons indicated below, we do not believe that the arguments made by commenters warrant a finding of checklist noncompliance.

1. Listing Verification Process

131. As an initial matter, we disagree with commenters’ allegations that Verizon has changed the processes it uses to allow competitive LECs to verify the accuracy of their directory listings.⁵¹⁸ In support of their argument, AT&T contends that, subsequent to Verizon’s application for section 271 authority in Virginia, Verizon abandoned the local service request confirmation notice (LSRC) as a method by which competitive LECs can verify the accuracy of directory listings in favor of the Directory Listing Inquiry (DLI) service.⁵¹⁹ According to AT&T, by this action, Verizon acknowledges that its processes for verifying listing information are inaccurate, and has placed an unreasonable and potentially costly burden on competitive LECs to verify their own listing information?” Based on the evidence in the record, we find that Verizon is using the same systems and processes in the instant application states as it does in its other states which have already received section 271 approval.⁵²¹

132. Further, as Verizon has indicated, it never “abandoned” the use of the LSRC as an additional confirmation of directory listing information, but rather began to reconsider the efficacy of LSRC following an analysis of the four directories in West Virginia.⁵²² According to Verizon, LSRCs do contain the directory listing information for simple listings, as it appears on

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application states at the same time those improvements were made in Virginia. Verizon Application at 72. We take further comfort in the Maryland and West Virginia Commissions’ statement of intent to monitor directory listing accuracy. See Maryland Commission Comments, Ex. A at 8; West Virginia Commission Comments at 150. Also, FiberNet asserts that there are additional problems with directory listings in the yellow pages. FiberNet Comments at 54; FiberNet Reply at 11. The Commission has previously determined that Yellow Pages listings are not relevant to our examination of checklist compliance. See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255. Additionally, FiberNet alleges that Verizon does not provide Alpha/Numeric Listing Identifiers (ALI) Codes. FiberNet Comments at 30. As we found in the *Verizon Virginia Order*, Veriwn provides competitive LECs with a weekly ALI code report that contains a list of the competitive LECs’ ALI codes for directory listings associated with loop and facilities-based services. *Verizon Virginia Order*, 17 FCC Rcd at 21974, para. 169.

⁵¹⁷ AT&T Comments at 40.

⁵¹⁸ Department of Justice Evaluation at 9-10 (citing AT&T Comments at 37-38).

⁵¹⁹ AT&T Comments at 37, 38.

⁵²⁰ *Id.* at 38

⁵²¹ Veriwn McLean/Webster Reply Decl., paras. 42, 45. See also *Verizon Virginia Order*, 17 FCC Rcd at 21974, para. 168.

⁵²² Verizon McLean/Webster Decl., paras. 111-12.

the service **order**.⁵²³ While the competitive LECs can review the directory listing information from the LSRC, it may not be efficient for them to do so then **as** Verizon is still in the process of performing a quality review of listing orders when the LSRC is sent to the competitive LEC.⁵²⁴ According to Verizon, it performs various quality assurance steps during the order processing cycle to ensure the accuracy of information contained in the directory. Verizon discovered that a competitive LEC could be making simultaneous corrections using the LSRC during this confirmation stage, thus causing system conflicts and potential listings **errors**.⁵²⁵ **As** a result of this discovery, Verizon suggested to the competitive LECs that using the DLI to verify listings after the completion step would provide an additional, and potentially more accurate, view of the directory **information**.⁵²⁶ Because the DLI would provide a more accurate indication of competitive LECs' listings as they would appear in Verizon's white page listings than the LSRC, we believe that Verizon's actions, rather than constituting a checklist violation, are a further indication of Verizon's commitment to ensuring the accuracy of customer listings.

133. We disagree with commenters' allegations that Verizon's error rate on directory listings is high." We further disagree that the current process of verifying a customer's directory listing, under which the competitive LECs may engage in checking on their own, impermissibly shifts Verizon's duty to the competitive LEC of ensuring the accuracy of directory listings.⁵²⁸ The record shows that the accuracy of Verizon's directory listings is **high**.⁵²⁹ Prior to filing this application, Verizon performed a special study in Virginia that tested the reliability of directory listing information from the service order through its publication in the listings verification report (LVR).⁵³⁰ The results of this study showed that the match rate of this information ranged between 96.78% and 99.51%. The remaining unmatched service orders were resolved by Verizon?" Further, when competitive LECs raised concerns about the potential publication of directory listing errors in West Virginia, Verizon delayed the publication of four directories to further ensure the accuracy of competitors' listings.⁵³² Upon investigation, Verizon

⁵²³ Verizon McLean/Webster Reply Decl., para. 53.

⁵²⁴ *Id*

⁵²⁵ *Id*

⁵²⁶ Verizon McLean/Webster Decl., para. 112

⁵²⁷ See AT&T Comments at 35 (claiming Verizon's error rate for competitive LEC directory listings ranges between 0.67 and 1.67%); FiberNet Comments at 51 (showing 1229 listing errors out of 4580 listings in the LVR); FiberNet Reply at 7-12.

⁵²⁸ AT&T Comments at 40; FiberNet Comments at 48.

⁵²⁹ Verizon McLean/Webster Decl., para. 103-110

⁵³⁰ *Id*, para. 103.

⁵³¹ *Id* (21 unmatched services orders were remaining)

⁵³² *Id.*, para. 110.

found 101 incorrect listings, 58 of which were corrected prior to publication.⁵³³ We believe that Verizon has taken appropriate actions, and performed necessary adjustments to remedy these problems in a satisfactory manner.

134. We do not agree that the errors cited by FiberNet rise to the level of checklist noncompliance. FiberNet claims that some customers' names were transposed, with the listing showing the customer's first name first, thus putting it out of sequence in the directory:" Verizon has shown that it made software changes in September and October 2002 to detect and correct this type of error." FiberNet has not shown that this continues to be a problem and thus we have no reason to believe that Verizon has failed to adequately address this problem. Similarly, we reject FiberNet's claim that Verizon in West Virginia is inappropriately holding the processing of their service orders to insure that the directory listing is **correct**.⁵³⁶ It is inconsistent for FiberNet to argue that by taking reasonable actions to ensure the accuracy of FiberNet's listings, Verizon is failing to provide nondiscriminatory access to those listings.

135. We also do not agree with the FiberNet assertion that UNE-loop competitive LECs do not receive equal treatment with regard to directory listings. According to FiberNet, when a competitive LEC using UNE-platform or resale migrates a customer from Verizon retail service, the directory listing is migrated through Verizon's systems without need for modification?" When competitive LECs using their own facilities migrate a customer from Verizon, FiberNet claims that the directory listing information must be deleted from Verizon's system completely, and then re-submitted to Verizon so that it can be sent to Verizon's database for inclusion in the directory listing.⁵³⁸ According to FiberNet, this extra step is responsible for the vast majority of directory listing errors and **omissions**.⁵³⁹ Rather than being discriminatory, Verizon explains that this process is necessary to ensure the accuracy of the listings of facilities-based carriers' listings. According to Verizon, if a competitive LEC provides service using unbundled stand-alone loops, or is a facilities-based provider, that competitive LEC provides the dial tone and telephone number from its own switch?" Accordingly, Verizon is not aware of the new telephone number used to serve the end user. Thus, Verizon cannot automatically arrange for the directory listing, as it can with competitive LECs that provide services via UNE-platform

⁵³³ *Id.* The remaining 43 listings were for the Wheeling West Virginia book, which closed in June and had already been published.

⁵³⁴ FiberNet Comments at **51**.

⁵³⁵ Verizon McLean/Webster Reply Decl., para. **56**.

⁵³⁶ FiberNet Comments at 53. FiberNet did not quantify the delay in processing service orders

⁵³⁷ *Id.* at **48**.

⁵³⁸ *Id.*

⁵³⁹ *Id.*

⁵⁴⁰ Verizon McLean/Webster Decl., para. 95.

or resale.”⁵⁴¹ We find that Verizon’s procedure for facilities-based carriers, therefore, offers carriers a meaningful opportunity to compete.

2. DLI Charge

136. We also reject AT&T’s assertion that the costs of using the DLI, which if actually imposed by Verizon would range from \$.24 to \$.27 for each inquiry, are unduly burdensome for the competitive LECs.⁵⁴² AT&T expresses concern that while the Maryland Commission has demanded a removal of this charge from Verizon’s interconnection agreements in that state, there has been no such requirement by either the D.C. or West Virginia Commissions.⁵⁴³ AT&T acknowledges that Verizon has stated that it will not levy this charge, but notes it has not confirmed that it will not assess this charge for future DLI queries, or begin back billing competitive LECs for inquiries made to date.

137. Because Verizon is not currently seeking to impose a charge for DLI queries, we find that AT&T’s claims of unreasonableness are premature and, accordingly, not relevant for purposes of the instant **application**.⁵⁴⁴ We also note that the appropriateness of such a charge is presently before the Maryland and D.C. Commissions,⁵⁴⁵ and the West Virginia Commission has indicated it would review the appropriateness of such a charge if Verizon sought to impose **one**.⁵⁴⁶ With respect to back billing, Verizon has indicated that it would not back bill for DLI services in the application states.”

D. Checklist Item 10 – Databases and Associated Signaling

138. Section 271(c)(2)(B)(x) of the Act requires a BOC to provide “nondiscriminatory access **to** databases and associated signaling necessary for call routing and **completion**.”⁵⁴⁸ Based

⁵⁴¹ Id., paras. 94-95

⁵⁴² AT&T Comments at 39

⁵⁴³ Id. at 40.

⁵⁴⁴ Verizon Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl. at paras. 9-10

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.*

⁵⁴⁷ Id; see also Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Feb. 20, 2003) (Verizon Feb. 20 Ex Parte Letter).

⁵⁴⁸ 47 U.S.C. § 271(c)(2).

on the evidence in the record, we find, as did the state **commissions**,⁵⁴⁹ that Verizon provides nondiscriminatory access to databases and signaling networks in the application states?”

139. Only one commenter raised an issue regarding signaling. Starpower argues that Verizon is not providing common channel signaling (CCS) links as UNEs, but is requiring competing LECs to purchase CCS links through interstate special access **tariffs**.⁵⁵¹ The record shows that Starpower ordered CCS links as special access services in September or October 1998, before Verizon made an ordering process available for purchasing unbundled CCS links.⁵⁵² The record shows, however, that if Starpower or any other competitive LEC currently wishes to purchase CCS links as a UNE, Verizon will assist the competitive LEC throughout the process of designing, ordering, and installing the links.⁵⁵³ Because there is no evidence in the record that Verizon is presently denying competitive LECs access to CCS links as UNEs, we do not find Verizon is violating the requirements of checklist item 10.⁵⁵⁴ Additionally, although we do not rely on it, the record shows that Verizon is working on a method of accomplishing Starpower’s special access to UNE conversions that will not interrupt service on the links, and will not require Starpower to write new **orders**.⁵⁵⁵ Further, the record shows that Verizon will provide Starpower with a credit for the difference between access rates and UNE rates for the period from December 1998, when CCS links could be ordered as UNEs, until such time as the conversion to UNEs is **completed**.⁵⁵⁶

E. Checklist Item 11 – Number Portability

140. Section 271(c)(2)(B) of the Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.⁵⁵⁷ Section 251(b)(2) requires all LECs “to provide, to the extent technically feasible, number portability in

⁵⁴⁹ Maryland Commission Comments, **Ex. A** at 3; D.C. Commission Comments at 53; West Virginia Comments at 94.

⁵⁵⁰ Verizon Lacouture/Ruesterholz Maryland Decl., para. 301; Verizon Lacouture/Ruesterholz D.C. Decl., para. 291; Verizon Lacouture/Ruesterholz West Virginia Decl., para. 288.

⁵⁵¹ StarpowerRIS LEC Comments at 16-21.

⁵⁵² Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 2 (filed Feb. 7, 2003) (Verizon Feb. 7 *Ex Parte* Letter on **LNP** and CCS Links). Verizon instituted an ordering process for unbundled CCS links in December 1998, but Starpower’s links were not converted from access to **UNEs** at that time. *Id*

⁵⁵³ *Id*

⁵⁵⁴ *Id* The record shows that the ASR form now includes fields that allow a competitive LEC to order CCS links as **UNEs**. *Id*

⁵⁵⁵ *Id*

⁵⁵⁶ *Id*

⁵⁵⁷ 47 U.S.C. § 271(c)(2)(B)(xi)

accordance with requirements prescribed by the Commission.”⁵⁵⁸ Based on the evidence in the record, we find, as did the state commissions,⁵⁵⁹ that Verizon complies with the requirements of checklist item 11.⁵⁶⁰

141. Only one commenter raises an issue regarding this checklist item. Starpower contends that the process of porting numbers for customers that have DSL-based services, which is different from the process of porting customers without DSL service, causes Starpower to experience significant delays in acquiring customers that currently subscribe to both voice and DSL services.⁵⁶¹ Starpower alleges that when porting numbers from customers that have Verizon voice service and are receiving DSL service from either Verizon or another provider, the order is rejected from Verizon’s system until the customer cancels the DSL on the line.⁵⁶² Additionally, Starpower alleges that it is difficult to tell the customer to perform this required step because Starpower cannot identify the data LEC that is providing the DSL to the customer.⁵⁶³

142. The record shows that the process for converting a customer with DSL service when a customer switches to a new local service voice provider is the same for Verizon as for any competitive LEC.⁵⁶⁴ Verizon explains that when voice and data are established on a single line, the voice provider controls the line, and the data provider is a “sub-tenant.”⁵⁶⁵ As a result, when the underlying voice service is disconnected, as happens when an end user chooses Starpower as his or her new local service provider and asks that the existing telephone number be ported to the new service, the data service using the same line must also be disconnected.⁵⁶⁶ When an end user changes his or her voice provider, the end user must also contact his or her

⁵⁵⁸ *Id.* at § 251(b)(2)

⁵⁵⁹ D.C. Commission Comments at 54; West Virginia Commission Comments at 94. The Maryland Commission did not raise any concerns related to checklist item 11.

⁵⁶⁰ Lacouture/Ruesterholz Maryland Decl., para. 328-31; Lacouture/Ruesterholz D.C. Decl., para. 316-19; Lacouture/Ruesterholz West Virginia Decl., para. 313-16. Verizon provides the local number portability in Maryland, Washington, D.C., and West Virginia using essentially the same procedures and processes as in the other states where Verizon has obtained approval under section 271. Lacouture/Ruesterholz Maryland Decl., para. 328; Lacouture/Ruesterholz D.C. Decl., para. 316; Lacouture/Ruesterholz West Virginia Decl., para. 313.

⁵⁶¹ Starpower/US LEC Comments at 21

⁵⁶² *Id.* Starpower claims that that competitive LEC requests for number portability of customers who currently have DSL and voice should be handled in the ordinary course, similar to the treatment of a request from a customer who has several Verizon voice lines and wishes to transfer one of the lines to a competitive LEC’s voice service.

Id.

⁵⁶³ *Id.*

⁵⁶⁴ Verizon McLean/Webster Reply Decl., para. 15; *see also* Verizon Feb. 7 *Ex Parte* Letter on LNP and CCS Links at 1-2.

⁵⁶⁵ Verizon McLean/Webster Reply Decl., para. 15.

⁵⁶⁶ *Id.*

Internet Service Provider (ISP) or data LEC, either to determine how the ISP or data LEC can still provide service to the customer or to notify the ISP or data LEC to terminate the service and to stop billing.⁵⁶⁷ Additionally, the record shows that a code identifying the data LEC is provided on the customer's CSR, so that the new voice carrier can tell whether Verizon or another data LEC is providing the customer's DSL service.⁵⁶⁸ Because nothing in our rules regarding number portability prohibits Verizon's policy of requiring the customer to cancel its DSL and ISP and because Verizon's policy is applied in a nondiscriminatory fashion, we do not find Verizon's policy is a violation of checklist item 11.⁵⁶⁹

F. Checklist Item 13 – Reciprocal Compensation

143. Section 271(c)(2)(B)(xiii) of the Act requires BOCs to enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."⁵⁷⁰ In turn, section 252(d)(2)(A) specifies the conditions necessary for a state commission to find that the terms and conditions for reciprocal compensation are just and reasonable.⁵⁷¹ We conclude that Verizon provides reciprocal compensation as required by checklist item 13.

144. We reject the allegation of Xspedius that Verizon fails to meet checklist item 13 because it refuses to provide reciprocal compensation in Washington, D.C. and in Maryland consistent with the Act and the Commission's rules.⁵⁷² Xspedius contends that Verizon refuses to pay for transport and termination provided by Xspedius for both voice and Internet-bound traffic.⁵⁷³ Xspedius argues that, regardless of the other remedies available to Xspedius or alleged

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.*

⁵⁶⁹ 47 C.F.R. § 52.21 defines the term "number portability" as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 C.F.R. § 52.21. See *also BellSouth Multistate Order*, 17 FCC Rcd at 17680-82, paras. 161-162 (finding that BellSouth's did not need to eliminate a requirement for competitive LECs to remove the DSL USOC before converting UNE-platform customers).

⁵⁷⁰ 47 U.S.C. § 271(c)(2)(B)(xiii).

⁵⁷¹ 47 U.S.C. § 252(d)(2)(A)

⁵⁷² Xspedius Comments at 2-3

⁵⁷³ *Id.* at 3. According to Xspedius, Verizon owes it over \$1.5 million for local transport and reciprocal compensation, *Id.* at 2. Xspedius claims that, since June 1, 2002, Verizon has withheld from Xspedius all payments for transport and termination usage charges in Washington, D.C. and Maryland. *Id.* at 3. See *also* Letter from Michael B. Hazzard, Counsel, Xspedius Management Co., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1-4 (filed Jan. 23, 2003) (providing clarification concerning Xspedius' reciprocal compensation claims) (Xspedius Jan. 23 *Ex Parte* Letter).

past due balances, Verizon must pay Xspedius the reciprocal compensation due in order for the Commission to find compliance with checklist item 13.⁵⁷⁴

145. Verizon responds by stating that it is engaged in discussions with Xspedius regarding billing disputes in Washington, D.C. and Maryland, among other **places**.⁵⁷⁵ In Washington D.C. and Maryland, Xspedius is the successor to interconnection agreements between e.spire and Verizon.⁵⁷⁶ According to Verizon, the Washington, D.C. interconnection agreement provides that all local and ISP-bound traffic shall be exchanged on a bill-and-keep basis.” Verizon further contends that the Maryland interconnection agreement entitles Xspedius to reciprocal compensation for local traffic, but not Internet-bound traffic.” Verizon further notes that both Xspedius and e.spire have “significant past due balances with Verizon under their Maryland agreement” and argues that such amounts should be set **off** against amounts owed by Verizon.⁵⁷⁹

146. As an initial matter, we note that Xspedius did not participate in the Maryland or Washington, D.C. 271 proceedings, and that both the Maryland and the D.C. Commissions determined that Verizon met the requirements of checklist item 13.⁵⁸⁰ To the extent that

⁵⁷⁴ Xspedius Jan. 23 *Ex Parte* Letter at 2. In addition, Xspedius claims that Verizon’s refusal to compensate it for Internet-bound traffic is contrary to the public interest. *Id.* at 2-3. *See infra* Section VII.B (Public Interest) for discussions on these alleged public interest violations.

⁵⁷⁵ *See* Letter from Ann D. Berkowitz Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Jan. 22, 2003) (stating that Verizon would like to resolve these billing disputes through negotiations or litigation before the relevant state commission) (Verizon Jan. 22 *Ex Parte* Letter on pricing issues). *See also* Verizon Reply at 42 n.35; Verizon Lacouture/Ruesterholz Reply Decl., para. 217.

⁵⁷⁶ Verizon Jan. 22 *Ex Parte* Letter on pricing issues at 2. *See also* Xspedius Comments at 2 (explaining that Xspedius acquired substantially all of the assets of e.spire Communications, Inc. in Maryland and Washington, D.C. in 2002).

⁵⁷⁷ Verizon Jan. 22 *Ex Parte* Letter on pricing issues at 2. Xspedius acquired the assets of e.spire in Washington, D.C. and Maryland. Xspedius Comments at 3-4 n.7. Verizon and Xspedius reached a settlement regarding reciprocal compensation **amounts** owed prior to May 31, 2002. Xspedius Comments at 3-4 n.7.

⁵⁷⁸ Verizon Jan. 22 *Ex Parte* Letter on pricing issues at 2. According to Verizon, paragraph **81** of the *ISP Remand Order* establishes a rule of bill-and-keep for Internet traffic for new entrants and markets in cases where the competitive LEC and the incumbent LEC did not exchange traffic pursuant to an interconnection agreement prior to the adoption of the *ISP Remand Order*. Verizon argues that, because Xspedius did not begin providing telecommunications services in Maryland until December 11, 2002 (after the adoption of the *ISP Remand Order*), the order requires Xspedius and Verizon to exchange Internet-bound traffic on a bill-and-keep basis. *Id.* (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (*ISP Remand Order*)).

⁵⁷⁹ *Id.*

⁵⁸⁰ *See* DC Commission Comments at 56-58 (concluding that, despite a payment dispute with AT&T concerning compensation for Internet-bound traffic, Verizon has met the requirements of this checklist item pursuant to section (continued..))

Xspedius and Verizon are unable to resolve their differences in their ongoing negotiations, we find that Xspedius' allegations are best addressed in the first instance in a proceeding to enforce its interconnection agreements.⁵⁸¹ While we do not require parties to raise all pricing issues elsewhere before raising them in a section 271 proceeding, it is both impractical and inappropriate for us to make these sorts of fact-specific findings regarding compliance with interconnection agreements in a section 271 review when the issue was not previously raised in the appropriate forum.⁵⁸² Although we have an independent obligation to ensure compliance with the checklist, "section 271 does not compel us to preempt the orderly disposition of intercarrier disputes."⁵⁸³ We have confidence that the allegations of Xspedius will be resolved in a more appropriate forum consistent with our rules.

147. We also reject, for a separate reason, Xspedius' claim that Verizon must fail checklist item 13 because it refuses to pay reciprocal compensation for Internet-bound traffic. The Commission previously determined that whether a BOC pays reciprocal compensation for Internet-bound traffic "is not relevant to compliance with checklist item 13"⁵⁸⁴ because Internet-bound traffic is not subject to the reciprocal compensation provisions of sections 251(b)(5) and 252(d)(2).⁵⁸⁵ Although currently subject to remand, our rules regarding the scope of section

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271(c)(2)(B)(xiii)); Maryland Commission Comments, **Ex. A** at 3 (finding that, subject to certain conditions, Verizon is in compliance with the section 271 checklist).

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Xspedius indicates that it is engaged in ongoing efforts to settle its dispute with Verizon and states its intent to continue settlement discussions. Xspedius Comments at 2 n.3.

⁵⁸² *In the Matter of Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc. for Authorization to Provide In-Region, InterLATA Services in California*, WC Docket No. 02-306, Memorandum Opinion and Order, FCC No. 02-330, para. 143 (rel. Dec. 19, 2002) (*Pacific Bell California Order*); *In the Matter of Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solution), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Vermont*, CC Docket No. 02-7, Memorandum Opinion and Order, 17 FCC Rcd 7625, 7636, para. 20 (2002) (*Verizon Vermont Order*). See also *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 159 (declining to resolve a billing dispute under an interconnection agreement in a section 271 proceeding); *BellSouth Florida/Tennessee Order*, 17 FCC Rcd at 25736, para. 155 (rejecting a claim by KMC that BellSouth is obligated to pay reciprocal compensation for properly disputed charges).

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Verizon New Jersey Order, 17 FCC Rcd at 12354, para. 159 (quoting *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 118); *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20776, para. 115.

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Verizon Connecticut Order, 16 FCC Rcd at 14177, para. 67. Accord *Verizon Pennsylvania Order*, 16 FCC Rcd at 17484, para. 119; *Verizon Massachusetts Order*, 16 FCC Rcd at 9108-09, para. 215.

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Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 3689 at 3706, para. 26 n.87 (1999) (*Reciprocal Compensation Declaratory Ruling*), rev'd and remanded sub nom. *Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000), decision on remand, *ISP Remand Order*, 16 FCC Rcd 9151, 9167, 9171-72, paras. 35, 44 (2001), rev'd and remanded sub nom. *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

251(b)(5) remain in effect. Accordingly, we reject Xspedius' claim of checklist noncompliance based on Verizon's refusal to pay reciprocal compensation for Internet-bound traffic.⁵⁸⁶

148. FiberNet argues that Verizon's refusal to pay reciprocal compensation for Internet-bound traffic in West Virginia violates checklist item 13.⁵⁸⁷ Specifically, FiberNet contends that Verizon has refused to compensate FiberNet for minutes exceeding the 3:1 ratio established by the Commission in the *ISP Remand Order* and has refused to negotiate any alternative mechanism regarding compensation for these minutes.⁵⁸⁸ Verizon maintains that Internet-bound traffic is not subject to section 251(b)(5), which means that reciprocal compensation for such traffic is not an issue under the checklist.⁵⁸⁹ The West Virginia Commission considered this issue and concluded that Verizon satisfies checklist item 13.⁵⁹⁰ Based on the record before us, we agree. As discussed above, whether a carrier pays reciprocal compensation for Internet-bound traffic is irrelevant to checklist item 13. Moreover, the West Virginia Commission stated that parties to such disputes are free to "raise those disputes with the [West Virginia] Commission in an appropriate proceeding."⁵⁹¹ FiberNet filed a petition with the West Virginia Commission raising this issue, and the matter is now pending before the state commission.⁵⁹² There is no evidence on the record before us that warrants our interfering with a pending state proceeding addressing this dispute.

149. Starpower alleges that Verizon is in violation of checklist item 13 because Verizon's Model Interconnection Agreements for Maryland, Washington, D.C., and West Virginia contain provisions excluding payment of reciprocal compensation for virtual foreign exchange (FX) traffic.⁵⁹³ Virtual FX service allows callers from a distant incumbent LEC rate

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See In the Matter of Joint Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9173, para. 272 (2002) (*BellSouth Georgia/Louisiana Order*); *Verizon New Jersey Order*, 17 FCC Rcd at 12354, para. 160.

⁵⁸⁷ See FiberNet Comments at 61-63. FiberNet argues that, "until Verizon-WV is made to comply with the applicable orders issued by both the Commission and the Public Service Commission of West Virginia, it cannot be deemed to be in compliance with Checklist Item 13." *Id.* at 63.

⁵⁸⁸ *Id.* at 62.

⁵⁸⁹ Verizon Reply at 41; Verizon Lacouture/Ruesterholz Reply Decl., para. 218. Verizon adds that FiberNet has never attempted to rebut the presumption that traffic exceeding the 3:1 ratio was Internet-bound traffic. Verizon Lacouture/Ruesterholz Reply Decl., para. 218.

⁵⁹⁰ See West Virginia Comments at 101-03. Citing our prior section 271 orders, the West Virginia Commission concluded that disputes regarding reciprocal Compensation for Internet-bound traffic are irrelevant to checklist item 13. West Virginia Commission Comments at 103.

⁵⁹¹ *Id.* at 103

⁵⁹² Verizon Lacouture/Ruesterholz Reply Decl., para. 218

⁵⁹³ Starpower/US LEC Comments at 26

center to reach a virtual FX subscriber without incurring toll charges?” To accomplish this, competitive LECs simply assign their virtual FX customers an NPA-NXX associated with the rate center designated by the subscriber and rely on their switches’ broad coverage to complete calls between incumbent LEC rate centers.⁵⁹⁵ Starpower notes that the *Virginia Arbitration Order* concluded that Verizon had proposed “no viable alternative to the current toll rating system, under which carriers rate calls by comparing the originating and terminating NPA-NXX codes.”⁵⁹⁶ Starpower asserts that under the current toll rating system, Verizon is obligated to pay reciprocal compensation for virtual FX calls.⁵⁹⁷ Starpower argues that Verizon still has no viable alternative to the current toll rating system, and it consequently has no basis to exclude virtual FX calls from eligibility for reciprocal compensation.⁵⁹⁸

150. Verizon responds that virtual FX traffic is non-local access traffic for which Verizon has no obligation to pay reciprocal compensation under sections 251(b)(5) and 252(d)(2) of the Act.⁵⁹⁹ Verizon argues that because it has no obligation to pay reciprocal compensation for this traffic, Starpower’s argument that Verizon does not pay reciprocal compensation for virtual FX traffic is not relevant under checklist item 13.⁶⁰⁰

151. The Commission has not had occasion to determine whether incumbent LECs have a duty to pay reciprocal compensation for virtual FX traffic under section 252(d)(2), and we find no clear Commission precedent or rules declaring such a duty.⁶⁰¹ As we have found in

⁵⁹⁴ See Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1 (filed Jan. 29, 2003) (Verizon Jan. 29 *Ex Parte* Letter on virtual FX traffic).

⁵⁹⁵ Traditional FX service, by comparison, occurs when the ILEC connects the subscribing customer, via a dedicated private line for which the subscriber pays, to the end office switch in the distant rate center from which the subscriber wishes callers to be able to reach him without incurring the toll charges.

⁵⁹⁶ Starpower/US LEC Comments at 26 (quoting *Virginia Arbitration Order*, para. 301).

⁵⁹⁷ See *id.*

⁵⁹⁸ See *id.*

⁵⁹⁹ Verizon argues that these calls traverse two rate centers and therefore implicate the CLEC’s obligation to pay access charges. See Verizon Jan. 29 *Ex Parte* Letter on virtual FX traffic at 1-2.

⁶⁰⁰ Verizon argues that virtual FX traffic, like ISP-bound traffic, is not subject to section 251(b)(5) and therefore, as with ISP-bound traffic, a BOC’s payment of reciprocal compensation is not relevant to compliance with checklist item 13. See *id.* at 2.

⁶⁰¹ In the *Virginia Arbitration Order*, in choosing between the two sides’ proposals, the Bureau adopted contract language one consequence of which was to subject virtual FX calls to reciprocal compensation. The Bureau did not, however, address the legal question of whether incumbent LECs have an obligation under section 252(d)(2) to provide reciprocal compensation for virtual FX traffic. See *Virginia Arbitration Order*, paras. 286-288. We note that the issue of compensation for virtual FX traffic has been raised and may ultimately be resolved in our intercarrier compensation proceeding. See *Inter-carrier Compensation Regime NPRM*, 16 FCC Rcd at 9652, para. 115.

previous proceedings, given the applicable time constraints, the section 271 process simply could not function if we were required to resolve every interpretive dispute between a BOC and each competitive LEC about the precise content of the BOC's obligations to its competitors?"

Starpower does not allege that Verizon has refused to compensate it or any other interconnecting carrier for virtual FX traffic in the subject states, nor does Starpower allege that Verizon has refused to negotiate such an **arrangement**.⁶⁰³ To the extent Starpower has such a claim, a complaint before the state commission, or this Commission pursuant to section 208, is the more appropriate means for raising such allegations. "We decline to resolve Starpower's claim in the context of this proceeding.

152. We therefore reject the claims of Xspedius, FiberNet, and Starpower concerning Verizon's failure to pay reciprocal compensation and conclude that, with regard to these claims, Verizon has met its obligations under checklist item 13.

G. Checklist Item 14 – Resale

153. Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make "telecommunications services . . . available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3)."⁶⁰⁵ Based on the record in this proceeding, we conclude as did the state commissions,⁶⁰⁶ that Verizon satisfies the requirements of this checklist item.⁶⁰⁷ Verizon has demonstrated that it has satisfied its legal obligation to make retail telecommunications services available for resale to competitive LECs at wholesale rates. No commenters question Verizon's showing of compliance with the requirements of this checklist item except in the areas of directory assistance in Maryland and call blocking services, which we discuss below.

⁶⁰² See Verizon Pennsylvania Order, 16 FCC Rcd at 17475, para. 101; *SWBT Kansas/Oklahoma* Order, 16 FCC Rcd at 6355, para. 230.

⁶⁰³ We note that parties to an interconnection agreement have been and remain free to negotiate compensation arrangements for virtual FX traffic pursuant to sections 251 and 252.

⁶⁰⁴ See e.g., *BellSouth Multistate* Order, 17 FCC Rcd at 17717, para. 218. See also *Starpower Communications, Inc. v. Verizon-South, Inc.*, File No. EB-00-MD-019 (filed June 7, 2002).

⁶⁰⁵ 47 U.S.C. § 271(c)(2)(B)(xiv). See Appendix F, para. 67.

⁶⁰⁶ Maryland Commission Comments, **Ex. A** at 3; D.C. Commission Comments at 59; West Virginia Commission Comments at 103.

⁶⁰⁷ Verimn has a concrete and specific legal obligation in its interconnection agreements and tariffs to make its retail services available for resale to competing carriers at wholesale rates. See Verizon Lacouture/Ruesterholz Maryland Decl., para. 341; Verimn Lacouture/Ruesterholz D.C. Decl., para. 330; Verimn Lacouture/Ruesterholz West Virginia Decl., para. 330.

1. Resale of Directory Assistance

154. NALA/PCA contends that Verizon fails to make all retail services available for resale in accordance with the Act.⁶⁰⁸ Specifically, NALA/PCA argues that Verizon does not make its retail directory assistance service available for resale because the directory assistance service offered to resellers by Verizon does not include a free monthly call **allowance**.⁶⁰⁹ Verizon's retail tariff in Maryland provides residential customers with six free directory assistance calls per month, whereas Verizon's wholesale directory assistance tariff in Maryland contains no call allowance. Thus, resellers purchasing directory assistance from Verizon in Maryland get no free directory assistance calls per residential **line**.⁶¹⁰ NALA/PCA argues that Verizon's refusal to provide the same call allowance in Maryland "places resellers at a significant and potentially devastating competitive **disadvantage**."⁶¹¹

155. Verizon maintains that the Maryland Commission simply adopted a different rate structure for wholesale rates in Maryland." According to Verizon, in all states in the former Bell Atlantic service area other than Maryland, state commissions have established different wholesale discounts – one discount for resellers that use Verizon's directory assistance and operator services and a greater discount for resellers that provide their own directory assistance and operator services because Verizon will avoid the costs associated with these services if the reseller provides them.⁶¹³ In cases where it provides directory assistance and operator services, Verizon will incur more costs, thereby supporting a smaller **discount**.⁶¹⁴ Unlike other state commissions, the Maryland Commission declined to adopt a dual discount approach, **as** proposed by its staff. Maryland Commission staff had proposed a 16.63 percent discount for resellers not providing their own directory assistance services and a 19.87 percent discount for

⁶⁰⁸ NALAPCA Comments at 8-10. *See also* NALAPCA Feb. 12 Ex *Parte* Letter at 1-2. Additionally, NALAPCA alleges that Verizon does not resell national DA, although Verizon provides national DA to retail customers. NALA/PCA Comments at 8-9. However, the record **shows** that Verizon allows its national DA service to be resold by resellers at a wholesale discount. *See* Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC 02-384 at 1 (filed Feb. 11, 2003) (Verizon Feb. 11 Ex *Parte* Letter on DA).

⁶⁰⁹ NALAPCA Feb. 12 Ex *Parte* Letter at 4-6

⁶¹⁰ NALA/PCA Comments at 9.

⁶¹¹ *Id.* NALA/PCA states that, in other section 271-approved states, such as Delaware, New Jersey, and Pennsylvania, Verizon offers resellers the same monthly directory assistance call allowance that Verizon provides to its retail customers. *Id.*

⁶¹² *See* Verizon Reply at 44-46; Verizon Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl., paras. 22-28. *See also* Verizon Feb. 4 Ex *Parte* Letter on DA at 1-4.

⁶¹³ Verizon Feb. 4 Ex *Parte* Letter on DA at 1-2. *See also* Verizon Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl., para. 23.

⁶¹⁴ Verizon Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl., para. 23; Verizon Feb. 4 Ex *Parte* Letter on DA at 1-2.

resellers who provide such services.⁶¹⁵ Instead, the Maryland Commission adopted a single discount of 19.87 percent that applied to all resellers, regardless of whether they purchased directory assistance and operator services from Verizon or provided it **themselves**.⁶¹⁶ The Maryland Commission then directed Verizon to establish a separate tariff charge for directory assistance and operator services, subject to acceptance by the Maryland Commission.⁶¹⁷

156. On September 2, 1997, Verizon filed proposed regulations, rates, and charges for resold directory assistance and operator services.⁶¹⁸ After considering the matter at an administrative meeting, the Maryland Commission approved Verizon's tariff and declined to require a free call allowance for **resellers**.⁶¹⁹ Verizon contends that the Maryland Commission's decision to adopt a single wholesale discount and to deny a free call allowance for resellers is consistent with section 251(c)(4) and section 252(d)(3).⁶²⁰ According to Verizon, the Maryland rate structure gives resellers a single discount that is larger than the costs that will actually be avoided where Verizon provides directory assistance?" Verizon argues that the Maryland Commission permitted it to establish a separate charge for each directory assistance **call**.⁶²² Verizon states that the discount for lines that include Verizon's directory assistance is greater than the discount to which resellers would be entitled under the dual discount approach similar to that adopted in other states!" Thus, Verizon reasons that resellers do not pay more for resold

⁶¹⁵ *Maryland PSC Interim Rate Order* at 28. See also Verizon **Roberts/Johns/Given/Garzillo/Prosini/Sanford** Reply Decl., para. 24; Verizon Feb. 4 *Ex Parte* Letter on DA at 2.

⁶¹⁶ *Maryland PSC Interim Rate Order* at 28

⁶¹⁷ *Id* at 28-29.

⁶¹⁸ Verizon **Roberts/Johns/Given/Garzillo/Prosini/Sanford** Reply Decl., Attach. 1 (attaching Letter ~~from~~ Daniel P. Gahagan, Executive Secretary, State of Maryland Public Service Commission, to David K. Hall, Vice President and General Counsel, Bell Atlantic-Maryland, ML # 58356, **TE-2341** at 1 (dated Oct. 24, 1997)).

⁶¹⁹ See *id* The Maryland Commission also rejected a request to apply a discount to residential directory assistance and operator services because the rates for those services were below-cost. *Id* The Maryland Commission reasoned that because "there is no information on the record regarding the breakdown of the underlying costs, the Commission submits that avoided costs either do not exist or are indeterminable and should, therefore, be set at zero." *Id* at 2.

⁶²⁰ Verizon Feb. 4 *Ex Parte* Letter on DA at 2

⁶²¹ *Id*.

⁶²² Verizon **Roberts/Johns/Given/Garzillo/Prosini/Sanford** Reply Decl., para. 25; Verizon Feb. 4 *Ex Parte* Letter on DA at 2.

⁶²³ Verizon Reply at 44; Verizon **Roberts/Johns/Given/Garzillo/Prosini/Sanford** Reply Decl., para. 25; Verizon Feb. 4 *Ex Parte* Letter on DA at 1-2. Verizon states that the per-call charges approved by the Maryland Commission were established in recognition of this. Verizon Reply at 44. Verizon explains that, instead of adopting a smaller discount with some directory assistance call allowance, the Maryland Commission chose to give resellers a larger discount with no free calls. *Id* at 44-45. NALAPCA disputes this characterization and notes that the Maryland Commission addressed the 19.87 percent wholesale discount and the directory assistance call allowance issue in separate proceedings ten months apart. See NALAiPCA Feb. 12 *Ex Parte* Letter at 2-4. Because (continued..)

directory assistance in Maryland than in other Verizon states.⁶²⁴ Indeed, Verizon attempts to demonstrate that resellers purchasing Verizon's residential directory assistance are better off receiving the 19.87 percent discount with no free residential directory assistance calls than they would have been had the Maryland Commission adopted the dual discount approach with a free call **allowance**.⁶²⁵ Verizon claims that the Maryland Commission's decision to provide the wholesale discount for directory assistance calls in the form of a larger wholesale discount that applies to all resellers is a rate structure issue, which is within the state commission's

157. Based on the record, we conclude that the approach taken by the Maryland Commission does not disadvantage resellers, **as** NALA/PCA suggests. The Maryland Commission set avoided costs associated with directory assistance services at **zero**.⁶²⁷ In Maryland, unlike other Verizon states, the Maryland Commission declined to adopt a smaller discount for resellers that purchase directory assistance from Verizon and adopted a larger discount of 19.87 percent for all resellers. Although the Maryland Commission's approach is unique among the 271 applications we have considered, we find that it does not amount to clear error. Instead of receiving a call allowance, resellers purchasing directory assistance from Verizon in Maryland get the benefit of a larger discount amount that would ordinarily be available only to resellers providing their own directory assistance services. The rate analysis provided by Verizon demonstrates that, assuming the average number of two local directory assistance calls per month, resellers are slightly better off than they would have been had the

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our conclusion does not rely on the Maryland Commission's rationale for adopting the larger discount, we need not resolve this factual dispute here.

⁶²⁴ Verizon Reply at 45.

⁶²⁵ See Verizon Feb. 4 *Ex Parte* Letter on DA at 3-4 (providing a confidential analysis in support of its contention that resellers fare better under the current rate structure based on the average number of directory assistance calls per month). See also Verizon **Roberts/Johns/Given/Garzillo/Prosini/Sanford** Reply Decl., paras. 27-28 and Attach. 3 (*citing confidential version*).

⁶²⁶ Verizon Feb. 4 *Ex Parte* Letter on DA at 2-3. See also Verizon Reply at 45-46 (noting that section 251(c)(4) does not require than an incumbent LEC offer services at wholesale using the same rate structure that it uses for retail customers).

⁶²⁷ See Verizon **Roberts/Johns/Given/Garzillo/Prosini/Sanford** Reply Decl., Attach. 1 (attaching Letter from Daniel P. Gahagan, Executive Secretary, State of Maryland Public Service Commission, to David K. Hall, Vice President and General Counsel, Bell Atlantic-Maryland, ML # 58356, TE-2341 at 2 (dated Oct. 24, 1997)).

⁶²⁸ See Verizon Feb. 4 *Ex Parte* Letter on DA at 3 (stating that retail and resale residential customers in Maryland make, on average, two directory assistance calls per month). See also Verizon Feb. 11 *Ex Parte* Letter on DA at 1-2 (providing the source data for Verizon's claim that residential retail customers used, on average, approximately two directory assistance calls per month) (*citing confidential version*). NALAPCA questions Verizon's data because "the database from which the data was obtained records only **billed** calls, not free calls" and because the data does not segregate calls made by Verizon retail customers from those made by customers of NALAPCA members. NALA/PCA Feb. 12 *Ex Parte* Letter at n.4. Verizon responds that its data includes **all** directory assistance calls, including both billed and free directory assistance calls. See Letter from Ann D. Berkowitz, Project Manager - Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC (continued....)

Maryland Commission adopted the lower discount amount of 16.63 percent along with a free call allowance.⁶²⁹ Thus, although resellers do not get the free call allowance provided to retail customers, they receive an analogous benefit in the form of a larger discount off other retail services. Because the Maryland Commission's unique rate structure does not, as a practical matter, result in greater costs to the reseller, we do not agree with NALA/PCA that Verizon's refusal to provide a free call allowance in Maryland places resellers at any significant competitive disadvantage. Although we find no competitive disadvantage based on the record here, we note that this rate structure was set in 1997.⁶³⁰ We encourage the Maryland Commission to refresh the record on the resale of directory assistance services taking into account the approach taken in other Verizon states.

2. Call Blocking Services

158. We disagree with commenters' allegations that Verizon unreasonably requires resellers to either purchase call blocking services or be liable for casual, third-party, and collect call charges incurred by their end users.⁶³¹ The Commission has previously found that Verizon's

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Docket No. 02-384 at 2 (filed Feb. 21, 2003)(Verizon Feb. 21 *Ex Parte* Letter on DA). Verizon further argues that the segregation of calls requested by NALA/PCA would be inappropriate because the combined resale and retail directory assistance call volume is the relevant set of calls for the average customer and is consistent with Commission precedent. *Id.* at 2. We agree with Verizon that it is appropriate to look at the combination of retail and resale customers to determine the average customer's calling patterns. *See id.* (discussing the use of combined resale and retail data when determining Dial Equipment Minutes (DEM) to be used in the context of the Commission's benchmark analysis).

⁶²⁹

See Verizon **Roberts/Johns/Given/Garzillo/Prosini/Sanford** Reply Decl., paras. 27-28 and Attach. 3 (*citing confidential version*); Verizon Feb. 4 *Ex Parte* Letter on DA at 3-4 (*citing confidential version*). As Verizon correctly observes, applying the larger discount of 19.87 percent with a free call allowance would result in a windfall for resellers seeking to resell Verizon's directory assistance because Verizon would not be avoiding the costs associated with providing directory assistance service. Verizon **Roberts/Johns/Given/Garzillo/Prosini/Sanford** Reply Decl., para. 26.

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See Verizon **Roberts/Johns/Given/Garzillo/Prosini/Sanford** Reply Decl. at Attach. 1 (attaching Letter from Daniel P. Gabagan, Executive Secretary, State of Maryland Public Service Commission, to David K. Hall, Vice President and General Counsel, Bell Atlantic – Maryland, ML # 58356, TE-2341 at 1-2 (dated Oct. 24, 1997)). NALARCA also argues, as part of an *ex parte*, that Verizon's resale directory assistance tariff conflicts with federal law because it charges resellers a non-discounted rate for residential directory assistance service. NALA/PCA Feb. 12 *Ex Parte* Letter at 3. In a letter ruling dated October 24, 1997, the Maryland Commission rejected requests to include a free call allowance and discounts based on its conclusion that Verizon offered residential directory assistance at a rate below its cost. *Id.* We note that the **Local Competition First Report and Order** explicitly states that below-cost services are subject to the wholesale rate obligation under section 251(c)(4). *See Local Competition First Report and Order*, 16 FCC Rcd at 15973, para. 956. Because the Maryland Commission found that avoided costs should be "set at zero," *id.*, we can find no clear error in its decision not to apply any discount to residential directory assistance services. Nevertheless, we encourage the Maryland Commission to develop a more complete record on this issue in order to ensure that its conclusion is consistent with our rules and section 251(c)(4) of the Act.

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NALA/PCA Comments at 5. Commenters claim that such a policy impermissibly shifts risks and costs to the reseller from Verizon. *Id.* In addition, because Verizon's services will not block certain types of calls, including calls from interexchange carriers that have not opted to participate in Verizon's screening process, commenters (continued...)

policies are consistent with the requirements of this checklist item and commenters are merely renewing the same arguments that the Commission previously rejected in the *Verizon New Jersey Order*?”

H. Remaining Checklist Items (3, 5, 6, and 9)

159. In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and **conduits**),⁶³³ item 5 (unbundled **transport**),⁶³⁴ item 6 (local switching unbundled from **transport**),⁶³⁵ and item 9 (numbering administration).⁶³⁶ Based on the evidence in the record, we conclude, as did the state commissions,⁶³⁷ that Verizon demonstrates that it is in compliance with the requirements of these checklist items.⁶³⁸ We note that no party objects to Verizon’s compliance with these checklist items.⁶³⁹

VI. SECTION 272 COMPLIANCE

160. Section 271(d)(3)(B) provides that the Commission shall not approve a BOC’s application to provide interLATA services unless the BOC demonstrates that the “requested authorization will be carried out in accordance with the requirements of section 272.”⁶⁴⁰ Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in the application states as it does in Virginia, New Jersey, Connecticut, Maine, Pennsylvania, Rhode Island, Vermont, New York, Connecticut, and Massachusetts – where

(Continued from previous page) _____

contend that Verizon effectively requires resellers to pay for both ineffective call blocking services and for all calls that are not blocked. *Id.* at 6.

⁶³² Verizon McLean/Webster Reply Decl., para. 37-40. See *Verizon New Jersey Order*, 17 FCC Red at 12355, para. 162-163.

⁶³³ 47 U.S.C. § 271(c)(2)(B)(iii).

⁶³⁴ *Id.* § 271(c)(2)(B)(v).

⁶³⁵ *Id.* § 271(c)(2)(B)(vi).

⁶³⁶ *Id.* § 271(c)(2)(B)(ix).

⁶³⁷ Maryland Commission Comments, Ex. A at 3; D.C. Commission Comments at 28, 42-46, **52**; West Virginia Commission Comments at 63, 78-80, 93-94.

⁶³⁸ See Verizon Application at 64-65 (item 3), 41-43 (item 5), 40-41 (item 6), and 73-74 (item 9).

⁶³⁹ Arguments raised by Core regarding checklist item 5 are discussed in checklist item 4 (Section V.A), *supra*.

⁶⁴⁰ 47 U.S.C. § 271(d)(3)(B).

Verizon has already received section 271 **authority**.⁶⁴¹ Based on the record before us, we conclude that Verizon has demonstrated that it will comply with the requirements of section 272.

161. The only party to raise a concern that touches on Verizon's compliance with section 271(d)(3)(B) is the Maryland Office of the People's Counsel (MD-OPC), that claims that even if Verizon is complying with section 272, section 272 is insufficient to forestall the potential for discriminatory and anticompetitive **conduct**.⁶⁴² The MD-OPC suggests that the recent 272 audit in New York indicates that joint marketing, joint account management and combined billing between Verizon's local and long distance services confirm improper activities that might occur in Maryland after Verizon receives its section 271 **approval**.⁶⁴³ To the extent that the MD-OPC believes that the protections of section 272 as implemented by this Commission are insufficient, this is beyond the scope of this proceeding. Further, although the MD-OPC argues that the New York audit demonstrates a violation, there is no adjudicated finding of wrongdoing before us in the record. Moreover, although we do not rely on it, we note that the Maryland Commission has committed to "carefully review the biennial audit that Verizon is required to" undertake and that the Maryland Commission will "participate fully in the biennial audit proceedings conducted by the FCC, and institute its own proceeding, if necessary."⁶⁴⁴

VII. PUBLIC INTEREST ANALYSIS

162. Apart from determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity." At the same time, section 271(d)(4) of the Act states that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."⁶⁴⁵ Accordingly, although the Commission must make a separate determination that approval of a section 271 application is "consistent with the public interest, convenience, and necessity," it may neither limit nor extend the terms of the competitive checklist of section 271(c)(2)(B). Thus, the Commission views the public interest requirement

⁶⁴¹ See Verizon Application at 96-97, Application App. A, Vol. 5, Tab I, Declaration of Susan C. Browning. See also *Verizon Pennsylvania Order*, 16 FCC Rcd at 17486, para. 124; *Verizon Connecticut Order*, 16 FCC Rcd at 14178-79, para. 73; *Verizon Massachusetts Order*, 16 FCC Rcd at 9114-17, paras. 226-31; *Bell Atlantic New York Order*, 15 FCC Rcd at 4152-61, paras. 401-21; *Verizon New Jersey Order*, 17 FCC Rcd at 12357, para. 165; *Verizon Virginia Order* 17 FCC Rcd at 21987, para. 194.

⁶⁴² MD-OPC at 9-10. In addition, the MD-OPC requests the Commission to establish four additional rules for Verizon in dealing with its separate affiliate. *Id.* at 10-12.

⁶⁴³ *Id.* at 9 & App. 1 at 23-24

⁶⁴⁴ Maryland Commission Comments, Ex. A at 10.

⁶⁴⁵ 47 U.S.C. § 271(d)(3)(C).

⁶⁴⁶ *Id.* at § 271(d)(4).

as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.

163. We conclude, as did the state commissions, that approval of this application is consistent with the public interest.⁶⁴⁷ From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in the local exchange markets in the application states have been removed, and that the local exchange markets in these states are open to competition. We further find that the record confirms our view that, as noted in previous section 271 orders, BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.⁶⁴⁸

164. We disagree with commenters that low levels of competition in the application states indicate that it would be inconsistent with the public interest to grant this application.⁶⁴⁹ We similarly disagree with commenters asserting that under our public interest standard, we must consider a variety of other factors such as the economy and financing difficulties of competitive LECs.⁶⁵⁰ Further, we reject arguments by commenters that Verizon exercises control over local markets and therefore should not receive section 271 approval.⁶⁵¹ Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes do not necessarily undermine that showing. We note that Congress specifically declined to adopt a market share or other, similar test for BOC entry into long distance.⁶⁵² As the Commission has

⁶⁴⁷ See Maryland Commission Comments, **Ex. A** at **3**; D.C. Commission Comments at **16**; West Virginia Commission Comments at **105**.

⁶⁴⁸ See *SWBT Texas* Order, **15** FCC Red at **18558-59**, para. **419**

⁶⁴⁹ AT&T Comments at **62-69**; Core Comments at **25**; FiberNet Comments at **66-70** (stating that low levels of competition indicate that Verizon still has access to bottleneck facilities in West Virginia); MD-OPC Comments at **4**; Sprint Comments at **4-12**.

⁶⁵⁰ FiberNet Comments at **67** (stating that Verizon's entry into the long distance market will have a detrimental effect on competitors' ability and willingness to enter the local exchange market in West Virginia); Sprint Comments at **4-12**; Starpower Comments at **33-34** (stating that by not considering factors outside the BOC's control, we are abandoning the public interest standard).

⁶⁵¹ AT&T Comments at **65-69**; FiberNet Comments at **69-70** (stating that Verizon still controls bottleneck assets in West Virginia, as evidenced by low competitive market share there); MD-OPC Comments at **4** (stating that "if Verizon is allowed to offer in-region interLATA service while still maintaining what is effectively a monopoly in the local market (and especially in the residential market) such authorization is clearly not consistent with the public interest ..."); Starpower/US LEC Comments at **35** (stating that "Verizon's discriminatory and anticompetitive conduct in the [checklist] areas addressed in these Comments will only serve to preclude the development of viable competition"); FiberNet Reply at **34-35** (stating that Verizon is requiring West Virginia's state government agencies to honor telephone service contracts written before the passage of the Act).

⁶⁵² See, e.g., *Ameritech Michigan* Order, **12** FCC Red at **20585**, para. **77**; *Sprint v. FCC*, **274** F. 3d at **553-54**.

said in previous section 271 orders, factors beyond the control of the BOC, such as competitive LEC entry strategies, a weak economy, or the business plans of individual competing LECs or other BOCs, can explain the lack of entry into a particular market.⁶⁵³

A. Assurance of Future Performance

165. As set forth below, we find that the Performance Assurance Plans (PAPs) in the application states provide further assurance that the local markets in these states will remain open after Verizon receives section 271 authorization.⁶⁵⁴ Although it is not a requirement for section 271 approval that a BOC be subject to such post-entry performance assurance mechanisms, the Commission has previously stated that the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations.⁶⁵⁵ We have examined certain key aspects of the PAPs in the application states, and we find that the plans are likely to provide incentives that are sufficient to foster post-entry checklist compliance. As in prior section 271 orders, our conclusions are based on a review of several key elements in any performance remedy plan: total liability at risk in the plan; performance measurement and standards definitions; structure of the plan; self-executing nature of remedies of the plan; data validation and audit procedures in the plan; and accounting requirements.⁶⁵⁶ The three PAPs all expose Verizon to the same level of liability as in the Virginia PAP.⁶⁵⁷ The three commissions adopted self-executing PAPs, modeled on the PAPs adopted in New York and Virginia.⁶⁵⁸ The Maryland Commission uses the same

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See, e.g., *Verizon/Pennsylvania Order*, 16 FCC Rcd at 17487, para. 126.

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Ameritech/Michigan Order, 12 FCC Rcd at 20748-50, paras. 393-98. In all of the previous applications that the Commission has granted to date, the applicant was subject to an enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long distance market. See Verimn App. J – Maryland, Vol. 2, Tab 6, Verizon Maryland’s Compliance Filing of Maryland Carrier-to-Carrier Guidelines and Performance Assurance Plan (*Maryland PAP*); Verizon Application – App. G – D.C., Vol. 3, Tab 7, DC PSC’s Order No. 12451 Adopting Attached Performance Assurance Plan (D.C. *PAP*); Verimn Application – App. B – West Virginia, Vol. 2, Part h, Tab 2, Verizon West Virginia’s Supplemental Phase B Compliance Filing (Including Declarations, Attachments, and Verizon WV’s Proposed Performance Assurance Plan) (*West Virginia PAP*).

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See *Verizon/New Jersey Order*, 17 FCC Rcd at 12362, para. 176; *Ameritech/Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-98.

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See, e.g., *Verizon/Massachusetts Order*, 16 FCC Rcd at 9121-24, paras. 240-47; *SWBT/Kansas/Oklahoma Order*, 16 FCC Rcd at 6377-81, paras. 273-78.

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Verizon Application, App. A, Vol. 3, Tab E, Joint Decl. Of Elaine M. Guerard, Julie A. Canny, and Marilyn C. DeVito, para. 27 (Verizon Guerard/Canny/DeVito Decl.).

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Verimn Application at 104. After this application was filed, the New York PAP was modified by the New York Public Service Commission (New York Commission). In February 2003, Verimn will file performance assurance plans with Maryland, D.C., and West Virginia Commissions that have been revised to incorporate the changes adopted by the New York Commission. Letter from Ann D. Berkowitz, Project Manager – Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1-2 (filed Jan. 30, 2003) (Verizon Jan. 30 *Ex Parte* letter).

general standards and measures set forth in the Virginia Carrier-to-Carrier Guidelines.⁶⁵⁹ The D.C. Commission and the West Virginia Commission use the same general standards and measures set forth in the New York Carrier-to-Carrier Guidelines.⁶⁶⁰

166. While the New York and Virginia PAPs form the bases for the PAPs in the application states, the PAPs in the application states differ from the New York and Virginia PAPs to reflect the specific concerns of each commission. The PAPs differ only by the dollar amount at risk (although the percentage of net return at risk is the same for each state), the effective date, and the reporting date.⁶⁶¹ We find generally that the three PAPs satisfy our analyses in each of the above respects. No parties commented on any differences in the PAPs.

167. We disagree with AT&T's assertion that Verizon must agree not to challenge the authority of the three state commissions to make changes to the respective PAPs.⁶⁶² We conclude that the state commissions have demonstrated sufficient authority to implement, enforce, and change the plans in the application states, assuring that local markets will remain open after Verizon receives section 271 authorization.⁶⁶³ Additionally, the performance remedy plan is not the only means of ensuring that Verizon continues to provide nondiscriminatory service to competing carriers. In addition to the monetary payments at stake under this plan, Verizon faces other consequences if it fails to sustain an acceptable level of service to competing carriers, including enforcement provisions in interconnection agreements, federal enforcement action pursuant to section 271(d)(6), and remedies associated with antitrust and other legal actions.⁶⁶⁴

B. Other Issues

168. Commenters raise several other concerns which they contend support a finding that a grant of this application is not in the public interest.⁶⁶⁵ Based on the record before us, we

⁶⁵⁹ Verizon Guerard/Canny/DeVito Decl., para. 13. Additionally, on August 30, 2002, the Maryland Commission issued an order to automatically adopt any changes made to the New York Guidelines in the absence of the objection of Verizon or any competitive LEC. *Id.*, para. 14. These changes are effective January 2003, and therefore are not reflected in the performance data in Maryland in the instant application. *Id.*, para. 16.

⁶⁶⁰ Verizon Guerard/Canny/DeVito Decl., para. 23-24. For Washington, D.C., Verizon used the same guidelines as Maryland in the August 2002 reporting month and subsequently switched the revised New York Guidelines, which were used for all 5 reporting months for the West Virginia data. *Id.*, paras. 24-26.

⁶⁶¹ Verizon Guerard/Canny/DeVito Decl., paras. 28-30, 116

⁶⁶² AT&T Comments at 59-62.

⁶⁶³ See *Maryland PAP* at 22; *D.C. PAP*, para. 149; *West Virginia PAP* at 25.

⁶⁶⁴ 47 U.S.C. § 271(d)(6).

⁶⁶⁵ See CloseCall Comments at 5-6; Core Comments at 25; MD-OPC Comments at 8; StarpowerRIS LEC Comments at 36-37, Letter from Glenn S. Richards and Susan M. Hafeli, Counsel for CAT Communications International, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1-2 (filed Mar. 11, 2003) (CAT Mar. 11 Ex Parte Letter); Letter from Glenn S. Richards and Susan M. Hafeli, Counsel to Metro Teleconnect, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket (continued....)

are unable to find that Verizon's processes or practices in the areas raised by commenters have such anti-competitive impact **as** to raise public interest concerns necessitating withholding of section 271 approval.

169. First, we find that Xspedius and NALA/PCA's arguments that approval of Verizon's application is not in the public interest are largely based on arguments of checklist **noncompliance**.⁶⁶⁶ We find that these concerns have been adequately addressed above. Second, we disagree with the MD-OPC that UNE-platform must remain available for Verizon's application to be in the public **interest**.⁶⁶⁷ The issue of whether UNE-platform will remain available was dealt with in the *Triennial Review* proceeding and is beyond the scope of the instant proceeding.

170. Third, we disagree with commenters that contend that because final UNE rates are not yet known, either because the state commission has not yet set final UNE rates or because Verizon has appealed the final UNE rate decision, it is impossible to know what level of local phone competition will develop for residential **customers**.⁶⁶⁸ Specifically, the MD-OPC argues it is impossible to know what level of phone competition will develop for residential customers until the Maryland Commission sets final UNE rates.⁶⁶⁹ Although it is possible that the amount of facilities-based residential competition may change in the future in Maryland, as we explain above, we find that facilities-based competitors serve more than a *de minimis* amount of

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No. 02-384 at 1-2 (filed Mar. 11, 2003) (Metro Teleconnect Mar. 11 Ex *Parte* Letter); Letter from Glenn S. Richards and Susan M. Hafeli, Counsel for NALAPCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-384 at 1-2 (filed Mar. 11, 2003) (NALAPCA Mar. 11 Ex *Parte* Letter); Letter from Joseph G. Dicks, Counsel for North County Communications, to Mr. Jackson Nichols, Department of Justice, WC Docket No. 02-384 at 1 (filed Mar. 11, 2003) (NCC Mar. 11 Ex *Parte* Letter) (alleging unfair business practices by Verizon in California, Oregon, and New York).

⁶⁶⁶ See Xspedius Comments at 4-5 (asserting that Verizon's withholding of reciprocal compensation payments demonstrates that its application violates the public interest); *see also* NALAPCA Comments at 11 (asserting that Verizon's application violates the public interest because competitive LECs are being "squeezed" by Verizon's failure to negotiate billing disputes, its insistence on the purchase of ineffectual blocking services, and on providing wholesale directory assistance that is inferior to its retail service), Xspedius Jan. 23 Ex *Parte* Letter at 2-4. We note that Xspedius also argues that Verizon's failure to pay reciprocal compensation is a violation of our *ISP Remand Order*. *Id.* at 3-4. The Verizon-Xspedius disagreement stems from the parties' differing interpretations of the *ISP Remand Order*. As we have stated in prior section 271 orders, new interpretive disputes concerning the precise content of an incumbent LEC's obligation to its competitors, disputes our orders have not yet addressed, and that do not involve *aper se* violation of our rules, are not appropriately dealt with in the context of a section 271 proceeding. *See, e.g., Verizon New Jersey Order*, 17 FCC Rcd at 12349, para. 151. We also reject commenters' arguments that Verizon is engaging in discriminatory, anti-competitive, or unlawful business practices. *See* CAT Mar. 11 Ex *Parte* Letter at 1-2, Metro Teleconnect Mar. 11 Ex *Parte* Letter at 1-2, NALAPCA Mar. 11 Ex *Parte* Letter at 1-2. These commenters provide no specific evidence of discriminatory, unlawful, or anti-competitive behavior by Verizon.

⁶⁶⁷ MD-OPC Comments at 8.

⁶⁶⁸ *Id.* at 7; Starpower/US LEC Comments at 36-37.

⁶⁶⁹ MD-OPC Comments at 7.

customers for the purposes of the instant application. Moreover, the Maryland Commission required Verizon to adopt an interim rate-setting approach similar to the approach Verizon employed and the Commission approved in the *Verizon Virginia Order*.⁶⁷⁰ Additionally, we reject arguments by Starpower and US LEC that Verizon's appeal of the final UNE rates set by the D.C. Commission indicates that approval of this application is not in the public interest.⁶⁷¹ The Commission has previously found that although there may be some uncertainty concerning the ultimate outcome of pending rate appeals, such uncertainty does not warrant denial of a BOC's section 271 application.⁶⁷² Finally, as discussed above, we find that the rates in effect in the application states satisfy our requirements under checklist item 2.⁶⁷³ Thus, we find that the lack of a final UNE rate order in Maryland and Verizon's appeal of the final rates in Washington, D.C. do not warrant a finding that the application is contrary to the public interest.

171. Fourth, FiberNet alleges that Verizon engages in anti-competitive marketing practices that make it difficult for competitors to enter or continue in the West Virginia market.⁶⁷⁴ In support of this generalized claim, FiberNet recounts three instances of such practices.⁶⁷⁵ Verizon states that it has extensive processes and procedures in place to ensure that its sales personnel do not make disparaging remarks about competitors and to ensure that, if such conduct occurs, appropriate disciplinary actions are taken.⁶⁷⁶ Consistent with our section 271 precedent, we find that such anecdotal evidence is not sufficient to demonstrate that this application is not in the public interest.⁶⁷⁷

172. Fifth, we reject North County Communications (NCC)'s allegation that Verizon engages in anticompetitive conduct.⁶⁷⁸ In support of their allegation, NCC merely submits numerous briefs that were filed with the West Virginia Commission regarding a complaint that is currently pending in front of the West Virginia Commission. NCC provides no evidence in their comments in this proceeding to support a conclusion that Verizon's actions violate our public interest standard or a specific checklist requirement.

⁶⁷⁰ *Verizon Virginia Order*, 17 FCC Rcd at 21949, para. 122; Maryland Commission Comments, Ex. A at 9

⁶⁷¹ Starpower/US LEC Comments at 37.

⁶⁷² See *SWBT Texas Order*, 15 FCC Rcd 18394, para. 87; *Verizon New Hampshire/Delaware Order*, 17 FCC Rcd at 18735 paras. 130-131.

⁶⁷³ See *supra* Section IV.A.3. (Pricing of Unbundled Network Elements).

⁶⁷⁴ FiberNet Comments at 63-66, FiberNet Reply at 34-35.

⁶⁷⁵ *Id.*

⁶⁷⁶ Verizon Reply at 53; see also Verizon Roberts/Johns/Given/Garzillo/Prosini/Sanford Reply Decl., para. 44

⁶⁷⁷ See, e.g., *Verizon New Jersey Order* 17 FCC Rcd at 12365-12366, para. 184.

⁶⁷⁸ NCC Comments at 1-2.

173. Finally, we do not find Verizon's alleged non-compliance with conditions set by the Maryland Commission rises to the level of finding that granting of this application is not in the public interest.⁶⁷⁹ Verizon has agreed to comply with the terms set by the Maryland Commission.⁶⁸⁰ Disputes over the implementation of those conditions are best addressed by the Maryland Commission. For our purposes, we find that Verizon has successfully complied with our rules.⁶⁸¹

VIII. SECTION 271(d)(6) ENFORCEMENT AUTHORITY

174. Section 271(d)(6) of the Act requires Verizon to continue to satisfy the "conditions required for . . . approval" of its section 271 application after the Commission approves its application.⁶⁸² Thus, the Commission has a responsibility not only to ensure that Verizon is in compliance with section 271 today, but also that it remains in compliance in the future. As the Commission has already described the post-approval enforcement framework and its section 271(d)(6) enforcement powers in detail in prior orders, it is unnecessary to do so again here.⁶⁸³

175. Working in concert with the state commissions in the application states, we intend to closely monitor Verizon's post-approval compliance to ensure that Verizon does not "cease[] to meet any of the conditions required for [section 271] approval."⁶⁸⁴ We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in each of the states.

176. Consistent with prior section 271 orders, we require Verizon to report to the Commission all Maryland, Washington, D.C. and West Virginia carrier-to-carrier performance metrics results and PAP monthly reports, beginning with the first full month after the effective

⁶⁷⁹ CloseCall Comments at 4-5 (stating that Verizon has not contacted CloseCall to establish technical and business arrangements for DSL service); Core Comments at 25 (stating that Verimn has not worked with Core Communications to provide interconnection over shared entrance facilities); MD-OPC Comments at 8 (stating that either the Maryland Commission or this Commission should require Verimn Maryland to commit to provide DSL to a customer who leaves Verimn to buy voice services from another company, but who wishes to keep his DSL service with Verizon); Close Call Reply at 1-4. See also Maryland Commission Comments, Ex. A at 7. We note that the Commission has previously found that it is neither a violation of the public interest nor a violation of a specific checklist item for a BOC to refuse to sell DSL to customers who have voice service provided by a competitive LEC. See *BellSouth Florida/Tennessee Order*, 17 FCC Rcd at 21949, para. 178.

⁶⁸⁰ See Maryland Commission Comments, Ex. A at 1-10 & Ex. B at 1-2.

⁶⁸¹ 47 U.S.C. § 271(d)(6).

⁶⁸² *Id.*

⁶⁸³ See, *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6382-84, paras. 283-85; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, paras. 446-53; see also Appendix F.

⁶⁸⁴ 47 U.S.C. § 271(d)(6)(A)

date of this Order, and for each month thereafter for one year, unless extended by the Commission. These results and reports will allow us to review Verizon's performance on an ongoing basis to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Verizon's entry into the long distance market for these states.

IX. CONCLUSION

177. For the reasons discussed above, we grant Verizon's applications for authorization under section **271** of the Act to provide in-region, interLATA services in Maryland, Washington, D.C., and West Virginia.

X. ORDERING CLAUSES

178. Accordingly, IT IS ORDERED that, pursuant to sections **4(i)**, **4(j)**, and **271** of the Communications Act of **1934**, as amended, **47 U.S.C. §§ 154(i)**, **154(j)**, and **271**, Verizon's application to provide in-region, interLATA service in Maryland, Washington, D.C., and West Virginia, filed on December **19, 2002**, IS GRANTED.

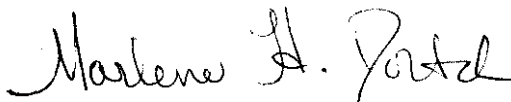
179. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE March **31, 2003**.

180. IT IS FURTHER ORDERED that Xspedius's Motion to Accept Late-Filed Comments is hereby GRANTED.

181. IT IS FURTHER ORDERED that Core's Motion to Accept Late-Filed Comments is hereby GRANTED.

182. IT IS FURTHER ORDERED that CloseCall's Motion to Accept Late-Filed Reply Comments is hereby GRANTED.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary